

90-105  
NO. \_\_\_\_\_

Supreme Court, U.S.

FILED

JUL 16 1990

JOSEPH F. SPANIOL, JR.  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

M. WILEY CATLETT,

Petitioner,

v.

JOHN R. LIVELY,  
JOHNNY W. RICHARDS, II, INDIVIDUALLY,  
AND AS SUCCESSOR ADMINISTRATOR OF THE  
ESTATE OF ERNEST LUTHER CATLETT,  
DECEASED, WESTERN SURETY COMPANY,  
AUBREY GROUP, Composed of: JOSEPH R.  
KILIANSKI, owner, DAVID J. McGILVRAY,  
owner, SHAROL L. TOLBERT, owner, L.  
M. TOLBERT, Buyer, FLORENCE IONA  
CATLETT, INDIVIDUALLY, and as INDE-  
PENDENT EXECUTRIX of the ESTATE of P.  
C. CATLETT, DECEASED and as ADMINIS-  
TRATRIX with Will Annexed to the  
ESTATE of CHARLIE CATLETT, DECEASED,  
MADRIN HUFFMAN, AS PROBATE COUNTY  
CLERK OF TARRANT COUNTY, TEXAS, The  
FEDERAL LAND BANK of TEXAS, (TOM J.  
FOUTS, Realtor & Commissioner,  
Filed notice of bankruptcy 6-16-89)

Respondents.

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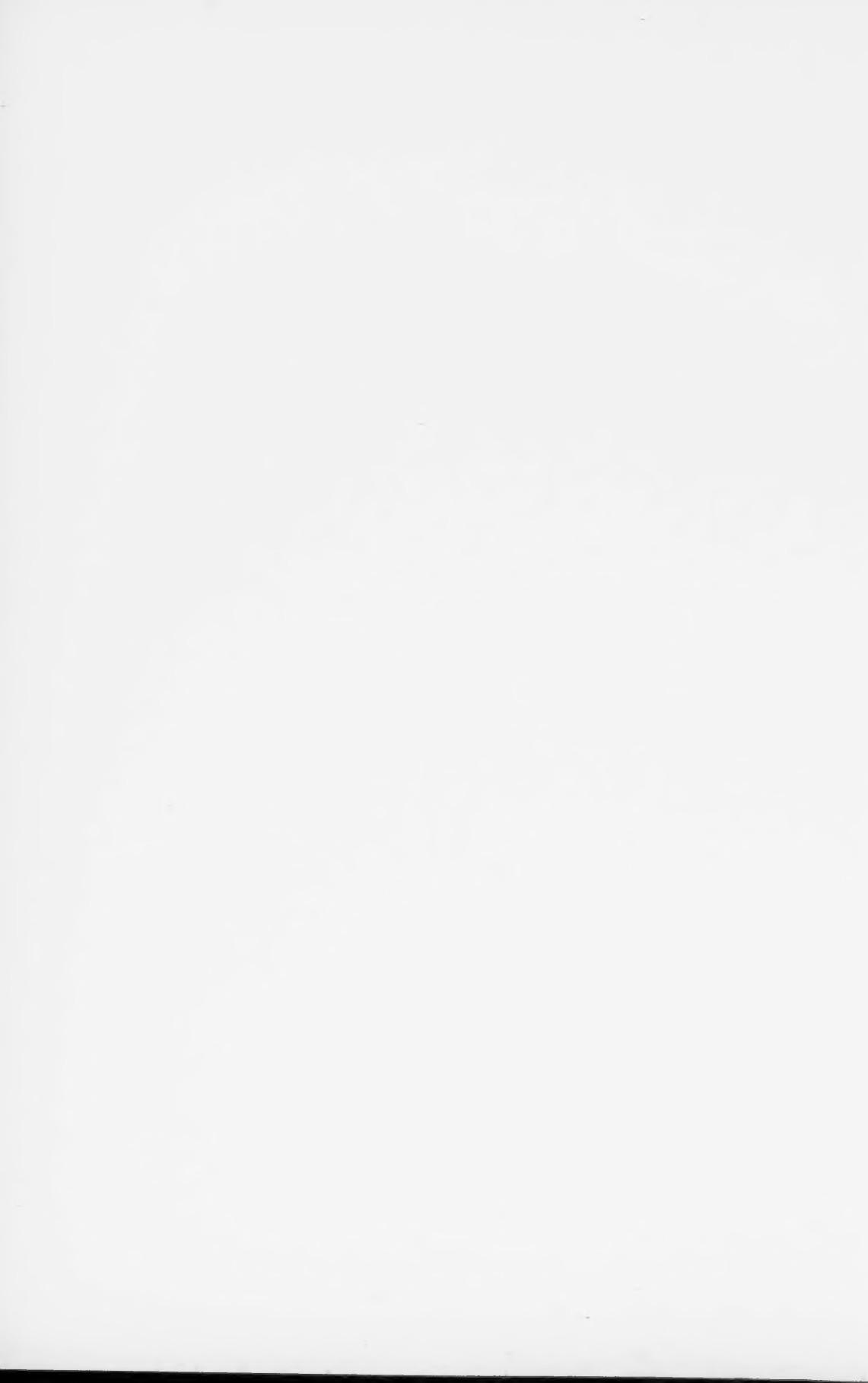
PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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(708) 831-3893



QUESTIONS PRESENTED

I. THE INSTANT CASE IS NOT A "REVIEW" OF ANY FORMER TEXAS STATE COURT CASE BY A FEDERAL DISTRICT COURT AS JUDGE PAUL BROWN MISTAKENLY SUPPOSED. AND COULD NOT BE SINCE ALL OF THE FACTS AND EVENTS CONTAINED IN PETITIONER-PLAINTIFF - M. WILEY CATLETT'S CLAIMS OF WRONG DOING BY DEFENDANT-RESPONDENTS AS SHOWN HEREIN & IN PARS. 70 THRU 100 IN CASE NO. S-87-83-CA, UNITED STATES D. C. FOR THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION, ONLY HAPPENED SINCE MARCH 22, 1984 WHEN JOHNNY W. RICHARDS, II BECAME THE SUCCESSOR ADMINISTRATOR OF THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED (M. WILEY CATLETT'S FATHER) BY APPOINTMENT OF JUDGE ROBERT M. BURNETT, PROBATE COURT NUMBER ONE, CAUSE NO. 77-2726, TARRANT COUNTY, TEXAS WITH BOND SET AT ONLY \$8,000.00 ON MARCH 22, 1984; HENCE, JUDGE BROWN AND THEN THE PANEL JUDGES GEE, DAVIS AND JONES OF THE FIFTH CIRCUIT COURT OF APPEALS ERRED IN SO HOLDING,



DIDN'T THEY?

HOWEVER, EVEN ASSUMING ARGUENDO, WHICH PETITIONER - "WILEY" STRONGLY CONTENDS OTHERWISE, THAT THIS CASE COULD ONLY BE "REVIEWED" - WHICH THIS IS NOT SUCH A CASE - BY "THE SUPREME COURT OF THE UNITED STATES"; IF SO, THEN PETITIONER IS INDEED, NOW IN THE RIGHT COURT, "THE SUPREME COURT OF THE UNITED STATES", ISN'T HE?

II. WHETHER, AS IN THE INSTANT CASE, THERE IS SUBJECT-MATTER JURISDICTION BECAUSE OF A DIVERSITY OF CITIZENSHIPS BETWEEN THE PARTIES AND THE AMOUNT IN CONTROVERSY HAS A SUM OR VALUE IN EXCESS OF \$10,000.00 EXCLUSIVE OF COSTS AND INTEREST, DID THE FEDERAL DISTRICT COURT IN SHERMAN, TEXAS AND THEN THE PANEL JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS ERR, WHEN THE PETITIONER/PLAINTIFF AND SOLE HEIR OF ERNEST LUTHER CATLETT, DEC'D. WHOSE FATHER'S ESTATE, CAUSE NO. 77-2726 OF TARRANT COUNTY, TEXAS, BEING ADMINISTERED SINCE MARCH 22, 1984 BY ATTORNEY JOHNNY W.



RICHARDS, II AS THE SUCCESSOR ADMINISTRATOR AND TRUSTEE, DID BREACH HIS TRUST TO THE SOLE HEIR AND BENEFICIARY, M. WILEY CATLETT, WHEN FOR EXAMPLE: "RICHARDS" PAID A FALSE AND MISLEADING AND SHAM CLAIM IN THE AMOUNT OF \$41,684.00 ON FEBRUARY 8, 1985 FOR "LIVELY'S" ALLEGED ATTORNEY'S FEES, EVEN THOUGH SAID ATTORNEY LIVELY'S CLIENT, FLORENCE IONA CATLETT, HAD PREVIOUSLY ON OCTOBER 25, 1982 ALSO FILED A CLAIM FOR "LIVELY'S" ALLEGED ATTORNEY'S FEES IN THE AMOUNT OF \$8,840.00 IN THE SAME COURT AND CAUSE, WHICH WAS REJECTED BY THE ADMINISTRATOR ON NOVEMBER 15, 1982 AND WHICH FIRST ALLEGED CLAIM FOR "LIVELY'S" ATTORNEY'S FEES WAS NOT SUED ON BY HER IN A TEXAS DISTRICT COURT WITHIN 90 DAYS AS REQUIRED BY TEXAS LAW, V.A.T.S., PROBC., SECTS. 308, 309, 310, 313 THE SAME BEING MANDATORY: THEREFORE, THAT CLAIM IS BARRED FOREVER, HENCE SHOWING THAT "LIVELY(S" SHAM \$42,228.00 CLAIM FILED ON JANUARY 25, 1985 FOR HIS ALLEGED ATTORNEY'S FEES AGAINST "THIS ESTATE", THE SAME NOT BEING A LEGAL ENTITY IN TEXAS, IS



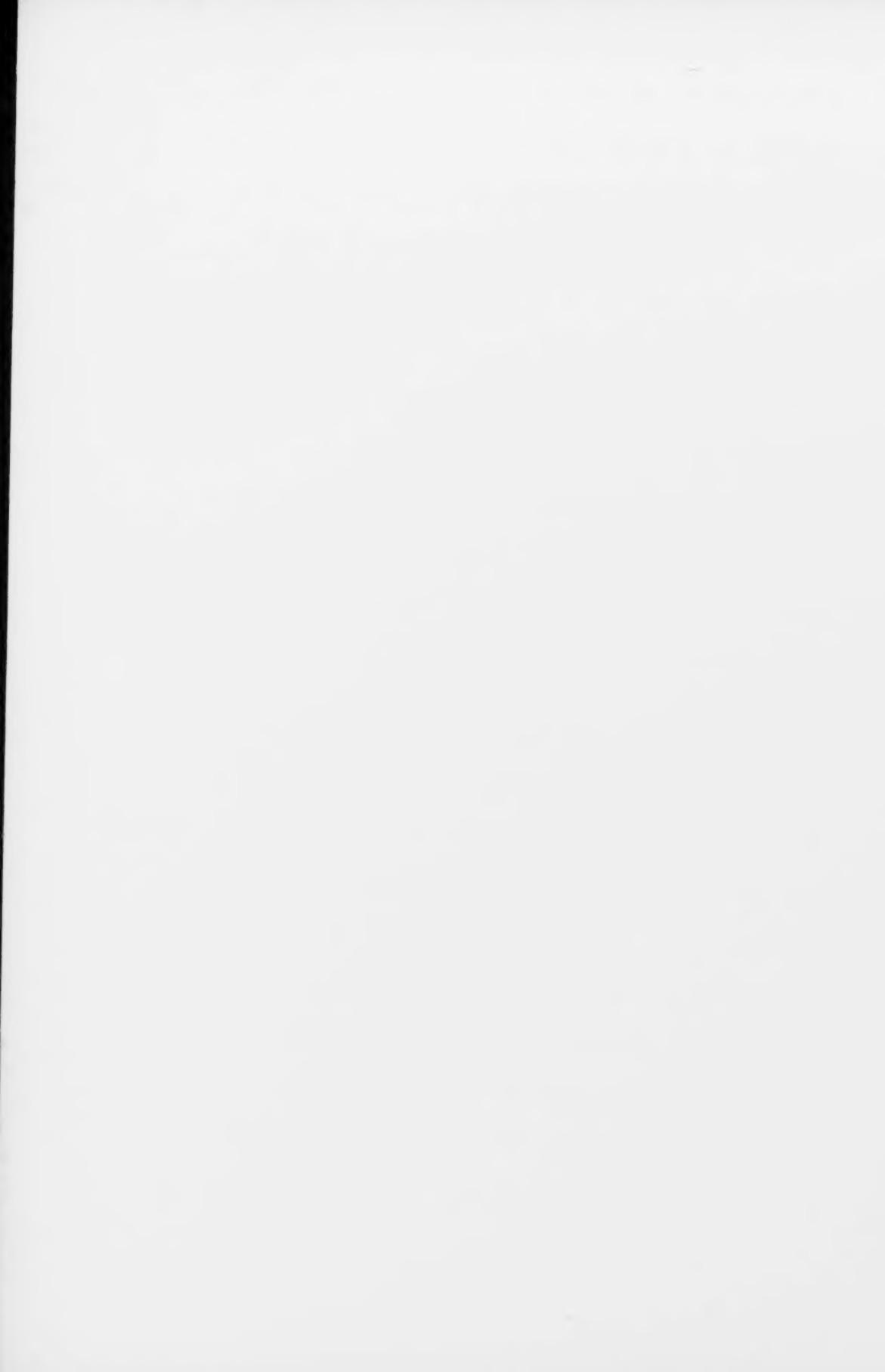
WITHOUT MERIT AND A FRAUD AND WHERE SAID SHAM  
"LIVELY" CLAIM FOR ATTORNEY'S FEES IS NOT  
PROPER UNDER V.A.T.S., Art. 2226, A SUIT FOR  
STATUTORY ATTORNEY'S FEES AS A SEPARATE  
ACTION CANNOT BE MAINTAINED ?

III. WHETHER, AS IN THE INSTANT CASE,  
NONE OF THE RESPONDENTS-DEFENDANTS FILED ANY  
"ANSWERS", AS SUCH, BUT ONLY A "MOTION TO  
DISMISS", AND NONE CONTAINED A "COUNTER-  
CLAIM" DENOMINATED, AS SUCH, AND WHERE THE  
TRIAL COURT IN ITS DISCRETION FILED NO "ORDER"  
COMMANDING THE "PLAINTIFF", "WILEY", TO  
"REPLY": HENCE, UNDER THOSE CONDITIONS, NO  
"REPLY" IS POSSIBLE OR PROPER UNDER RULE, 7(a)  
FED.R.CIV.PROC., WRIGHT AND MILLER, FEDERAL  
PROCEDURE & PRACTICE: CIVIL SECT. 1185, note  
28, p. 17 and note 32, p. 18; "REPLY IMPROPER  
TAYLOR v BLACK, SVALLS & BRYSON, INC. (CA8th  
1951) 189 F2d 213, THEREFORE, WAS THE TRIAL  
JUDGE, PAUL BROWN, SHERMAN DIVISION, U. S.  
DISTRICT COURT FOR THE EASTERN DISTRICT OF  
TEXAS IN ERROR IN HIS DISMISSAL OF "WILEY'S"  
COMPLAINT?



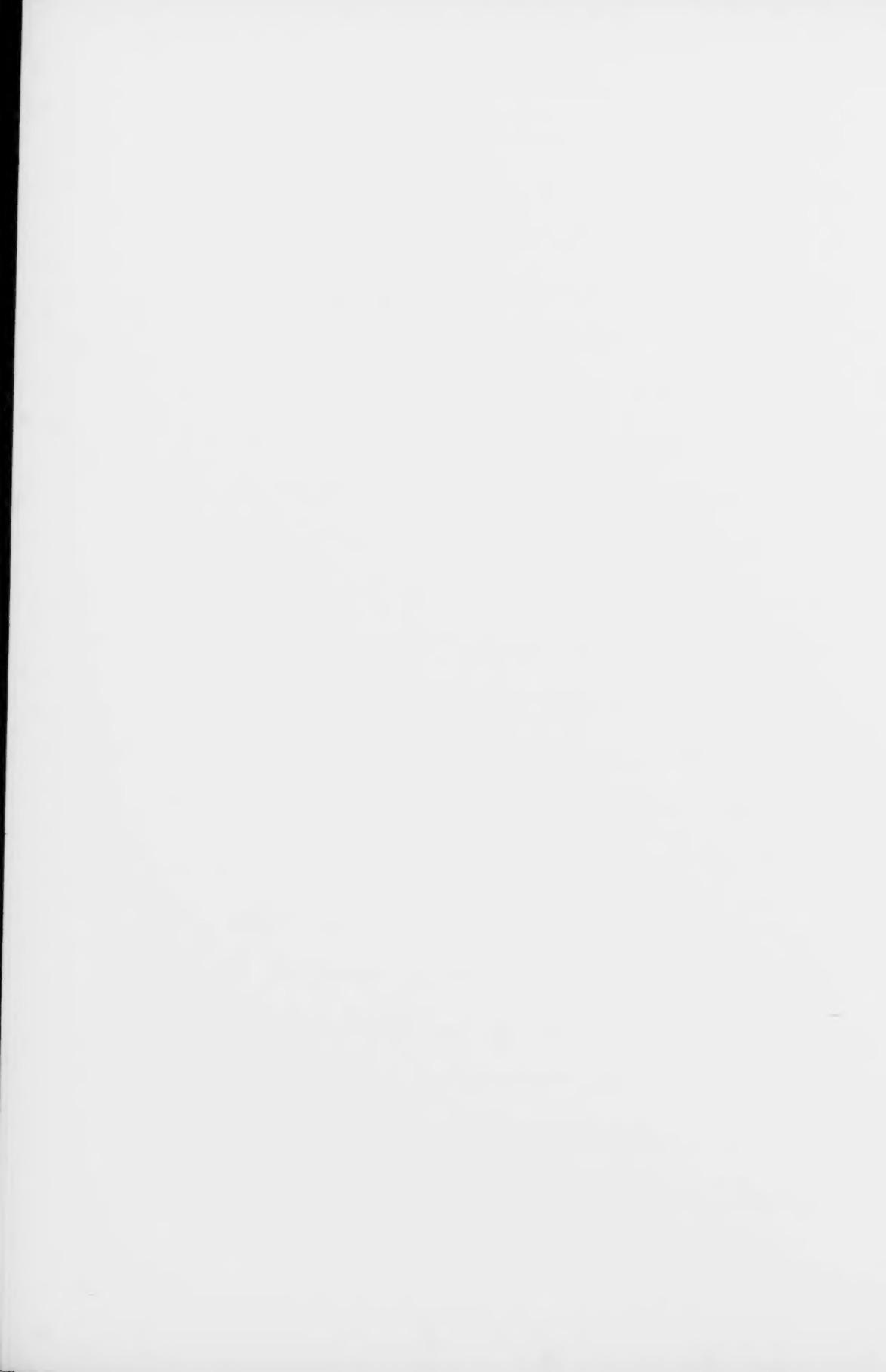
AND WITHOUT ALLOWING HIM ADDITIONAL DISCOVERY TO PROVE THAT HIS COMPLAINT HAS SUBJECT-MATTER JURISDICTION? CORRELATIVELY, DID THE TRIAL JUDGE AND THEN THE PANEL JUDGES OF THE FIFTH CIRCUIT ERR ACCEPTING DEFENDANTS DEFENSES OF LACHES OR STATUTE OF LIMITATIONS UNDER THEIR RULE, "12" F.R.C.P., "MOTION TO DISMISS": WHERE NONE MADE ANY AFFIRMATIVE "ANSWER", AS SUCH, UNDER RULE, 7, F.R.C.P., INSTEAD OF RULE 8(c) OF THE FEDERAL RULES OF CIVIL PROCEDURE, 28 U.S.C.A., FOLLOWING 723c?

IV. WHERE, AS IN THE INSTANT CASE, THERE IS SUBJECT-MATTER JURISDICTION BECAUSE OF A DIVERSITY OF CITIZENSHIPS BETWEEN THE PARTIES AND THE AMOUNT IN CONTROVERSEY HAS A SUM IN EXCESS OF \$10,000.00 EXCLUSIVE OF COSTS AND INTEREST, 28 U.S.C., Sect. 1332(a)(1), DID JUDGE PAUL BROWN OF THE FEDERAL DISTRICT COURT AND THEN THE PANEL JUDGES GEE, DAVIS AND JONES OF THE FIFTH CIRCUIT COURT OF APPEALS, ERR IN THEIR FAILURE TO CONSTRUE THE SECOND

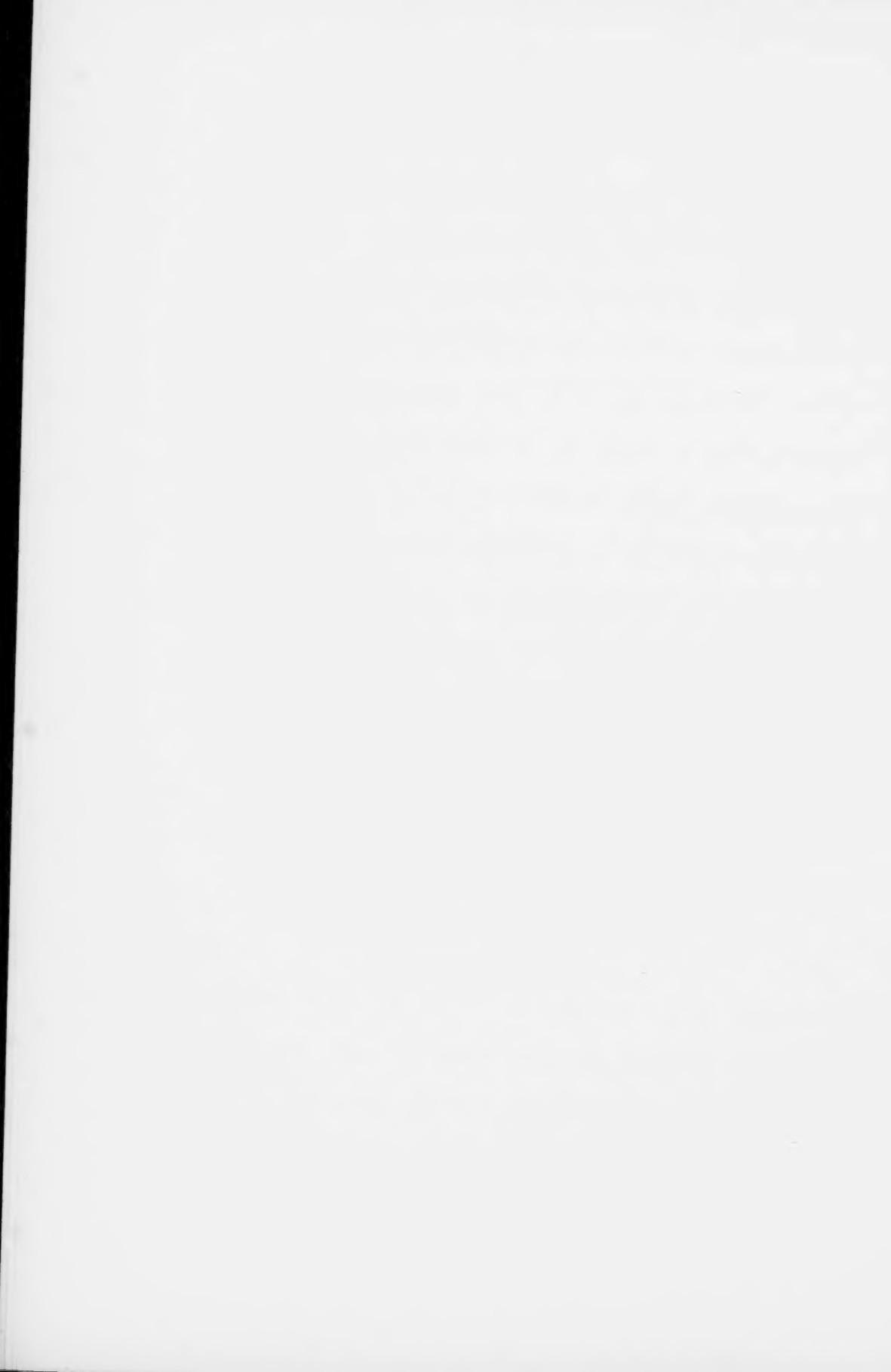


PROVISION OF CHARLIE CATLETT'S (A BROTHER OF ERNEST LUTHER CATLETT AND PHARON C. CATLETT) WILL (EXHIBIT "A" IN THE COMPLAINT OF M. WILEY CATLETT, PETITIONER AND SOLE HEIR OF HIS FATHER, ERNEST LUTHER CATLETT, DECEASED, 1977) AS REQUESTED BY "WILEY" IN HIS COMPLAINT AND HIS OPENING AND HIS REPLY BRIEFS WHERE SAID WILL IS NOT BEING CONTESTED, BUT IS AFFIRMED, SEEKING ONLY A CONSTRUCTION OF THAT SECOND PROVISION WHICH IS NEEDED TO DETERMINE WHETHER "ERNEST" OR HIS BROTHER, "PHARON", WHO PREDECEASED "ERNEST", INHERITED 100% OR JUST WHAT PERCENTAGE OF "WILEY'S" GRANDFATHER'S AND GRANDMOTHER'S @ 225.1 ACRE HOMESTEAD LOCATED NEAR AUBREY, TEXAS?

V. WHETHER, IN THE LAW OF THE CASE - NO. S-87-83-CA, U.S.DISTRICT COURT OF THE EASTERN DISTRICT OF TEXAS, SHERMAN DIVISION - THERE WAS PLAINTIFF- "WILEY'S" UNACTED ON "MOTION TO COMPEL ANSWERS FROM FLORENCE IONA CATLETT, et al, UNDER RULES, 37(a), 37(d),

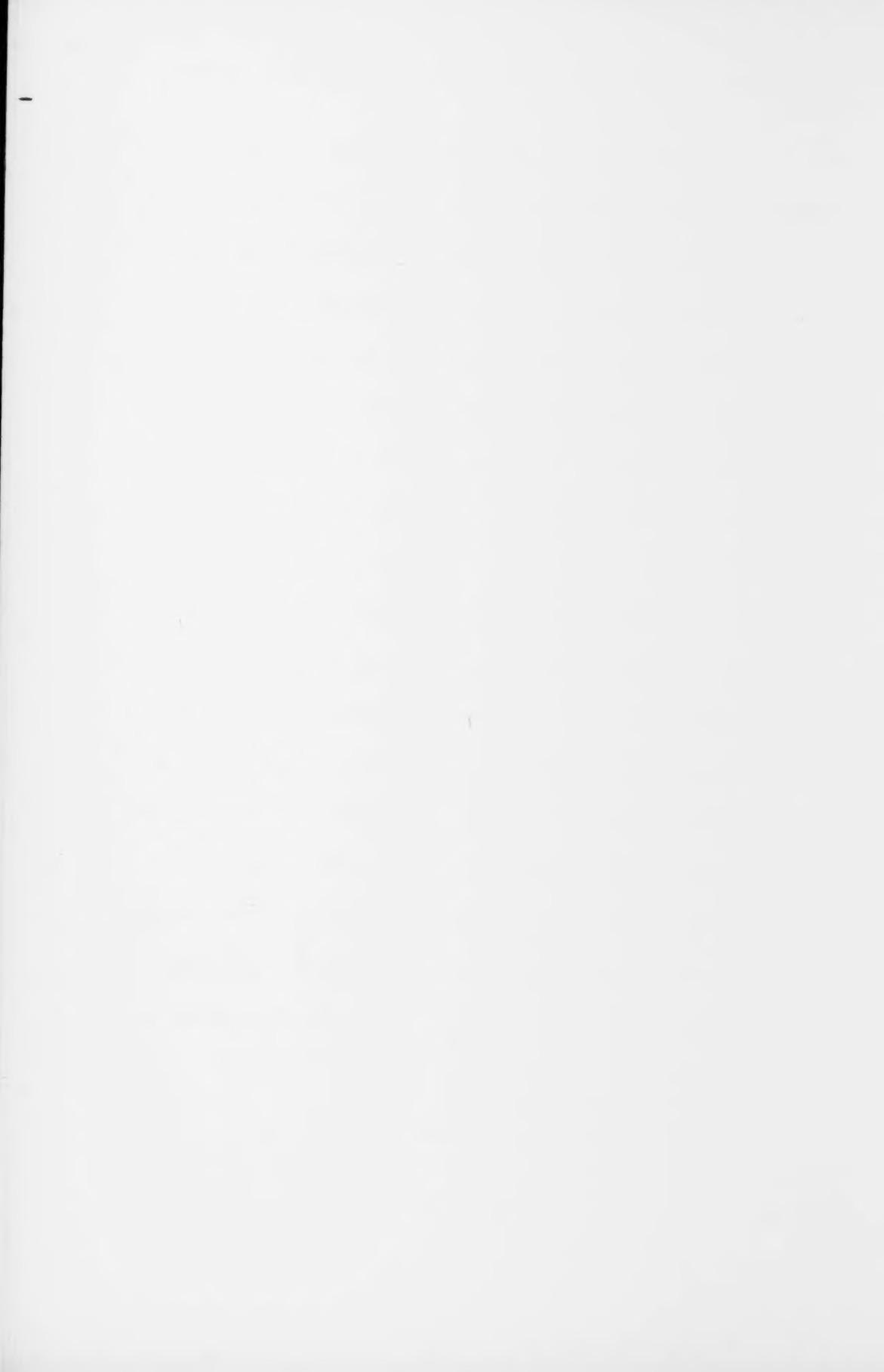


33, and 26"; SAID MOTION BEING FILE MARKED  
ON AUGUST 21, 1989 BY BEVERLY HUGGENS DEPUTY  
CLERK OF THE U. S. DISTRICT COURT, HAVING  
BEEN MAILED FROM DEERFIELD, ILL. 60015 ON  
AUGUST 18, 1989 PER POSTMARK THEREON, SAID  
"MOTION TO COMPEL ANSWERS" OF "WILEY'S" WAS  
STILL PENDING WITHOUT ANY RULING BY JUDGE  
PAUL BROWN - WHEN HE SIGNED HIS "ORDER" OF  
AUGUST 22, 1989 (APPENDIX "C", App. 5 & 6);  
YET JUDGE BROWN - BOTH BEFORE AND AFTER -  
SAID FILING HIS AUGUST 22, 1989 ORDER HAD  
SEVERAL OPPORTUNITIES TO CORRECT HIS MISTAKE,  
PLAINTIFF'S MOTION TO "SET-ASIDE" JUDGMENT,  
FED.R.CIV.P., RULE 59, AS DID THE PANEL  
JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS  
THEY CAN'T JUST IGNORE SAID "MOTION TO COM-  
PEL ANSWERS FROM "FLO", UNDER RULES 37(a),  
"7(d), 33 and 26", THE TRIAL JUDGE MUST DIS-  
POSE OF SAID PLAINTIFF'S (AUGUST 21, 1989  
MOTION) BEFORE HE CAN LEGALLY ACT TO DISMISS  
PLAINTIFF'S COMPLAINT, AS HE DID, ON AUGUST  
22, 1989; THEREFORE, JUDGE BROWN AND JUDGES



GEE, DAVIS AND JONES DID ERR , DID'T THEY?

VI. WHETHER, AS IN THE INSTANT CASE, THERE IS REAL PROPERTY (THE AUBREY, TEXAS FARM OF @ 225.1 ACRES WHICH FORMERLY BELONGED TO PETITIONER - M. WILEY CATLETT'S GRANDFATHER AND GRANDMOTHER, JAMES L. CATLETT AND HIS WIFE, ELIZABETH A. CATLETT) AND WHOSE FATHER'S INTEREST IS UNDER THE CONTROL OF THE JUDGE OF PROBATE COURT, NUMBER ONE, TARRANT COUNTY, TX., CAUSE NO. 77-2726, In Re: THE ESTATE OF ERNEST LUTHER CATLETT, DECEASED; HOWEVER, UNDER TEXAS LAW, V.A.T.S., PROBATE CODE, SECTION 37, IT REALLY BELONGED TO THE SOLE HEIR, M. WILEY CATLETT, WHO IS A CITIZEN OF ILLINOIS AND A NONRESIDENT OF THE STATE OF TEXAS AND WHERE PART OF THAT FARM - SOME ALLEGED 39 ACRES - IS SOLD BY JOHNNY W. RICHARDS II, SUCCESSOR ADMINISTRATOR TO SOME FRIENDS AND CLIENTS OF HIS, THE AUBREY GROUP, MADE UP OF: JOSEPH R. KILIANSKI, owner  
DAVID J. McGILVRAY, owner  
SHARON L. TOLBERT, owner,



ON OCTOBER 19, 1984 AND WITHOUT ANY "NOTICE"  
OR "HEARING" TO THE SOLE HEIR, M. WILEY  
CATLETT, AS REQUESTED IN LETTERS DATED, MAY  
24, 1983 BY THE THEN ATTORNEY OF RECORD,  
WILLIAM L. SMITH, JR. TO THE TARRANT COUNTY  
TEXAS PROBATE CLERK AND TO THE SUCCESSOR ADM-  
INISTRATOR: HENCE, THE HEIR WAS DEPRIVED OF  
HIS PROPERTY WITHOUT ANY NOTICE OR ANY HEAR-  
ING TO EITHER ATTORNEY SMITH OR THE HEIR,  
"WILEY", THEREBY VIOLATING HIS RIGHTS TO  
"DUE PROCESS OF LAW" UNDER THE FIFTH AND  
FOURTEENTH AMENDMENTS OF THE CONSTITUTION  
OF THE UNITED STATES; THEREFORE, JUDGE PAUL  
BROWN, U. S. DISTRICT COURT OF TEXAS AND  
THEN THE PANEL JUDGES GEE, DAVIS AND JONES  
OF THE FIFTH CIRCUIT COURT OF APPEALS ERRED  
IN THEIR HOLDING OTHERWISE, DIDN'T THEY?

VII. WHERE, AS IN THE INSTANT CASE, THERE  
HAS BEEN NO LEGAL PARTITION OF PETITIONER-  
"WILEY'S" GRANDFATHER AND GRANDMOTHER'S @  
225.1 ACRE HOMESTEAD LOCATED NEAR AUBREY,  
TEXAS, FOR THE REASON THAT THE THREE JUDGE



NARSUTIS' JUDGMENTS OF OCTOBER, 1982 IN  
FLORENCE IONA CATLETT'S PARTITION ACTION,  
NO. 81-8158-B, DENTON COUNTY, TEXAS WERE RE-  
VERSED AND REMANDED WITH COSTS AGAINST "FLO"  
ON MAY 18, 1983 BY THE OPINION, NO. 2-82-212-  
CV (#81-8158-B below), OF THE FORT WORTH,  
TEXAS APPELLATE COURT; THUS BARRING THE NEWLY  
APPOINTED (MARCH 22, 1984) SUCCESSOR ADMINIS-  
TRATOR, JOHNNY W. RICHARDS, II OF THE ESTATE  
OF ERNEST LUTHER CATLETT, DECEASED - "WILEY'S"  
FATHER AND HIS SOLE HEIR - NO. 77-2726,  
TARRANT COUNTY, TX., FROM SELLING SOME ALLEGED  
39 ACRES OF THAT @ 225.1 ACRES AND WHERE SAID  
LAND WAS REALLY OWNED BY THE HEIR, TO SOME  
CLIENTS AND FRIENDS OF "RICHARDS" ALLEGEDLY  
SOLD ON OCTOBER 19, 1984 TO THE AUBREY GROUP  
FOR \$82,000.00; YET "RICHARDS" DEPOSITING  
ONLY \$77,560.66 (@ 10-25-84); THEREFORE, DID  
THE FEDERAL DISTRICT COURT AND THEN THE FIFTH  
CIRCUIT COURT OF APPEALS ERR IN AFFIRMING  
SUCH ACTION, ESPECIALLY, WHEN "RICHARDS" PRO-  
CEEDED WITH THAT ALLEGED SALE IN VIOLATION-  
NO LEGAL PARTITION - OF SAID LAND AND NOT IN

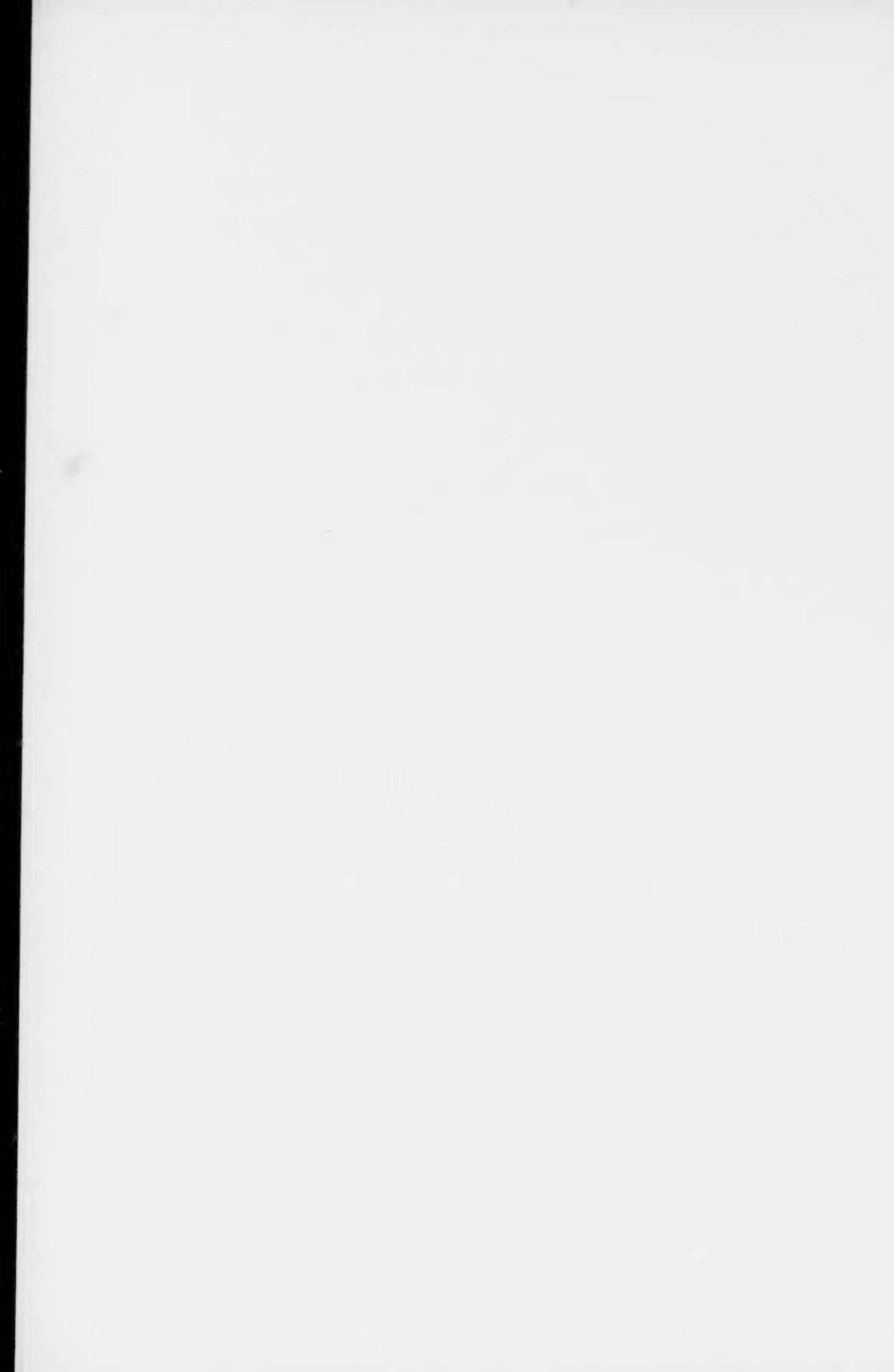


CONFORMITY WITH THE TEXAS PROBATE CODE,  
SECTIONS 353 (WHERE HE MADE "NO REPORT OF  
SALE" AS REQUIRED); NOR WAS "RICHARDS" BOND  
OF \$8,000.00 INCREASED ON THE SALE OF REAL  
ESTATE FOR \$82,000.00, SECT. 354; NOR DID  
THE COURT TAKE ANY ACTION ON THE "REPORT OF  
SALE" AS SECT. 355 REQUIRES; YET, "RICHARDS"  
PROCEEDED TO SELL SOME ALLEGED 39 ACRES OF  
THE FARM TO THREE FRIENDS AND CLIENTS OF  
HIS (THE AUBREY GROUP) AT A PRICE UNDER THE  
MARKET AT THAT TIME.

VIII. WHETHER, AS IN THE INSTANT CASE,  
PURSUANT TO F.R.C.P., RULES, 60(b)(3);  
EXTRINSIC FRAUD; 60(B)(4), VOID JUDGMENTS;  
60(b)(5), PRIOR JUDGMENT UPON WHICH IT IS  
BASED HAS BEEN REVERSED OR OTHERWISE VACA-  
TED, DID THE TRIAL JUDGE AND THEN THE PANEL  
JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS  
ERR WHEN THEY WERE CONSIDERING THE EFFECT  
ON LEGAL INSTRUMENTS WHICH DEAL WITH THE  
SUBJECT MATTER, "WILEY'S" GRANDFATHER AND  
GRANDMOTHER'S HOMESTEAD OR - ANY PART THERE-



OF - WHERE THE LEGAL DESCRIPTIONS THEREIN AS  
REQUIRED BY THE TEXAS STATUTE OF FRAUDS IS  
INSUFFICIENT IN ITS DESCRIPTION OR WHERE  
THE SAME IS MISSING IN SAID DOCUMENT WHICH  
DEALS WITH THE SALE OR CONVEYANCE OF LAND;  
THEREBY, RENDERING SAID DOCUMENT, JUDGMENT  
OR ORDER, TO BE NULL AND VOID?



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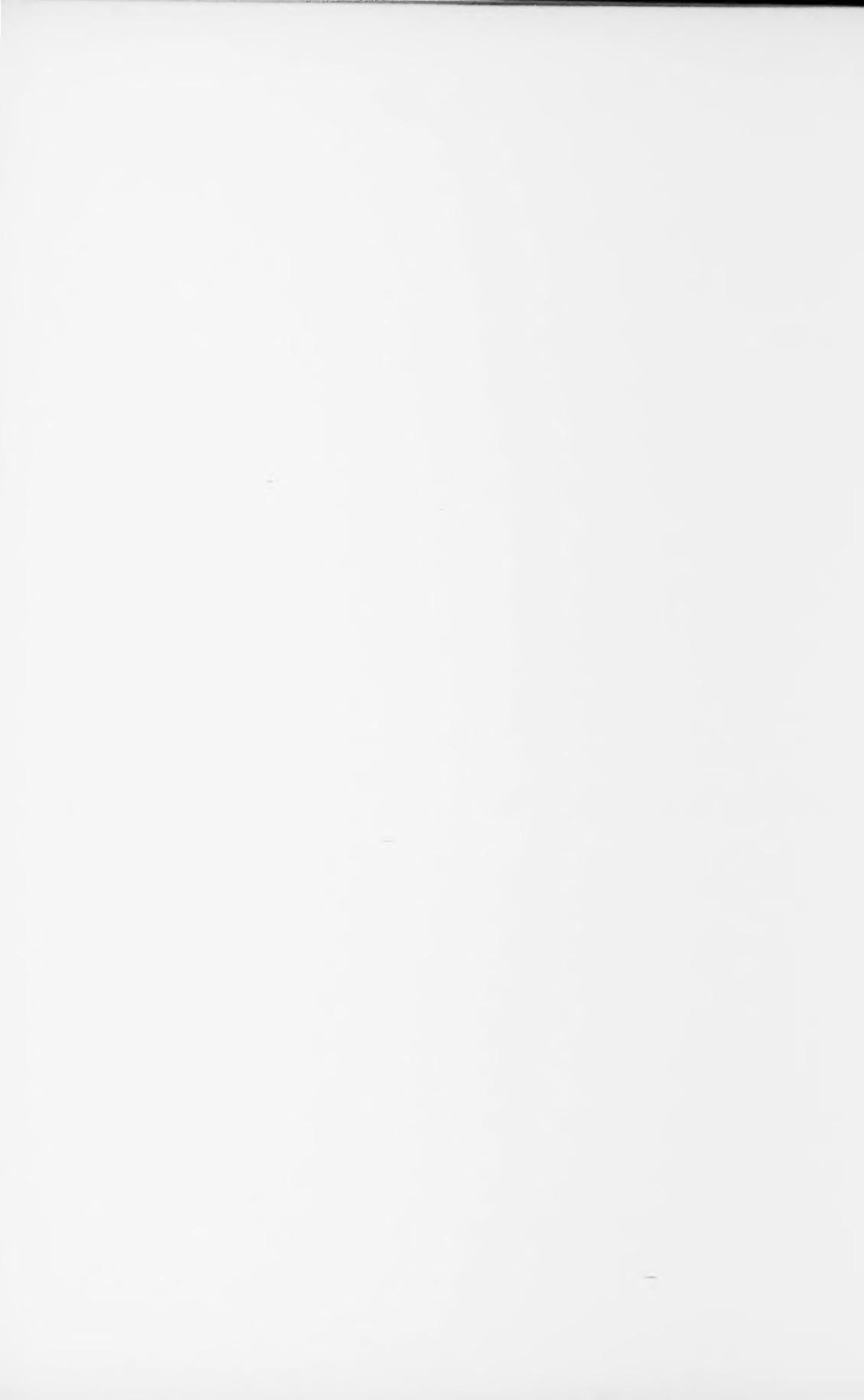


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OPINIONS BELOW

The 4-26-90 OPINION of the FIFTH CIRCUIT COURT of APPEALS denying a petition for rehearing, APPENDIX "E", App. 8 & 9. The 4-3-90 ORDER of the FIFTH CIRCUIT denying further extention of time for filing a petition for rehearing from & including 4-11-90, APPENDIX "E.1", App. 9.1 & 9.2. The 3-14-90 OPINION of the FIFTH CIRCUIT AFFIRMING the judgment of the U.S.District Ct. for the Eastern Dist. of Tx., Sherman Div., APPENDIX "D", App. 6, The 8-22-89 ORDER of the U.S. Dist. Ct. for the Eastern Dist. Ct. of Tx., Sherman Div. denying plaintiff's motion to "Set Aside", motion to enlarge time, etc., and motion for Sanctions Under Rules, 37, 34, and 26, APPENDIX "C", App. 5 & 6.

The 4-18-89 MEMORANDUM OPINION, dismissing plaintiff's claims for lack of subject matter jurisdiction, APPENDIX "B", App. 2 thru 4. The 4-18-89 ORDER of the U.S.Dist.Ct., for the Eastern Dist. of Texas, Sherman Div.,



dismissing plaintiff's claims for lack of subject matter jurisdiction, APPENDIX "A", App. 1. None of the above orders or opinions is reported; however, they are reproduced in the APPENDIX which is a separate volume.

The 5-14-81 "ORDER CONFIRMING SETTLEMENT", Probate Court No. 1, Tarrant County, Texas, No. 77-2726, APPENDIX "L", App. 26 thru 28. The 9-15-81 AGREED JUDGMENT, No. 236-39718-76, Tarrant County, Texas(Vol 1, p.239-245). The 5-18-83, OPINION (unpublished) - 2nd Supreme Judicial District. Court, Fort Worth, Tx., No. 2-82-212-CV (No. 81-8158-B below) Court of Appeals, APPENDIX "P", App. 50 thru 56. The 2-8-85 "ORDER AUTHORIZING PAYMENT OF CLAIM", Probate Court No. 1, Tarrant County, Tx., No. 77-2726, In Re: The Estate of Ernest Luther Catlett, Deceased, APPENDIX "W", App. 80 & 81.

STATEMENT OF JURISDICTION



This action (S-87-83-CA) is a civil suit with the jurisdiction of the United States Court for the Eastern District of Texas, Sherman Division having original jurisdiction under 28 U.S.C., Sect. 1331. In that, the Texas land owned by the Illinois heir, being under the control of Johnny W. Richards, II, Successor Administrator of the heir's father's estate (hereinafter "Ernest's Estate") - Cause No. 77-2726, Tarrant County, Tx., In Re: The Estate of Ernest Luther Catlett, Dec'd. On October 19, 1984, "Richards" purportedly sold some alleged 39 acres, a part of "Wiley's" grandfather's and grandmother's @ 225.1 acre homestead, known herein as the "AUBREY, TEXAS FARM" to some friends and clients of his (THE AUBREY GROUP) without any notice or any hearing to the sole heir, "Wiley", who had requested same in letters dated May 24, 1983 to the Probate Clerk of Tarrant County, Texas and to the



"Successor Administrrix" through his attorney of record, William L. Smith, Jr., (Exhibit "G" in Complaint). Which actions or failure to act, deprived the Illinois heir, a non-resident of the State of Texas of his property; thereby violating his rights to due process of law ( APPENDIX "X", App. 82) under the 5th and 14th Amendments of the Constitution of the United States.

The U. S. District Court's jurisdiction was also founded on diversity of citizenships of the parties, Petitioner is a citizen of Illinois and the Respondents are citizens of the state of Texas, except the Western Surety Company, which company is deemed to be a citizen of South Dakota doing business in the State of Texas. The Federal Land Bank of Texas (formerly, that is, before 1979, The Federal Land Bank of Houston) is a bank doing business in the State of Texas and deemed to be a citizen of the State of Texas. 28 U.S.C. Sect. 1332(a)(1):



The amount in controversy exceeds the sum or value of \$10,000.00. exclusive of interest & costs, and is between citizens of different states.

PAYNE v. HOOK, Supreme Court of the United States, 1868, 7 Wall 425, 19 L.Ed. 260,  
74 US 425, "The judicial power of the United States shall extend \* \* \* \* \* to controversies between citizens of different states. "Art.III,Const.,Sec.2. (APPENDIX "X", App. 82)

Further, on March 14, 1990 the FIFTH CIRCUIT COURT of APPEALS affirmed the April 18, 1989 ORDER and the AUGUST 22, 1989 ORDER of the U.S.District Court of the Eastern District of Texas, Sherman Div. A petition for rehearing and suggestion for rehearing en banc was denied on April 26, 1990. This Court's (The Supreme Court of the United States) jurisdiction is invoked under 28 U.S.C., Sects. 1254(1)

#### STATEMENT OF CASE

The claims, as will be spelled out later, are all new, contrary to Respondents-Defendants, they have not been litigated before



in any Texas State Court.

Petitioner "Wiley" filed his complaint (S-87-83-CA) on 4-16-87 in the United States District Court for the Eastern District of Texas, Sherman Division against Johnny W. Richards, II, Individually and in his fiduciary capacity, as the Successor Administrator of the Estate of Ernest Luther Catlett, Deceased ("Wiley's" father); therefore, he was trustee of the beneficiary and sole heir, "Wiley", and against his surety, Western Surety Company and others as mentioned in the caption herein. "Richards" is friend and the attorney of record for the AUBREY GROUP: Composed of: Joseph R. Kilianski, owner  
David J. McGilvray, owner  
Sharon L. Tolbert, owner, and against the buyer, L. M. Tolbert. "Richards" was appointed on March 22, 1984 by Judge Robert M. Burnett, Probate Court No. 1, Tarrant County, Tx., No. 77-2726 with his bond set by the Judge at only \$8,000.00.



The object of the complaint is to obtain relief against the fraudulent acts of the administrator, "Richards", and to compel a true account of the administration, in order that the real condition of the estate could be ascertained and the frauds and wrongs done be corrected and "Wiley" the sole heir paid what is due him.

The jurisdiction of the federal district court was denied by the Respondents, because in Texas, as in some other states, exclusive jurisdiction over all disputes concerning the duties or accounts of administration until final settlement is given to the local Probate Court, and as the administration complained of was still in progress in the Probate Court "Richards" was administering, he said that resort to correct the errors and frauds in the accounts must be had in that Probate Court or words to that effect.

The theory which "Richards" and Respondents seem to be advancing is that "Wiley",



were he a citizen of Texas, could obtain a redress of his grievances only through the local Probate Court, he had no better or different rights because he happened to be a citizen of Illinois. What does The Supreme Court of the United States say about that?

"Wiley's" claims in his complaint are somewhat as follows:

CLAIM NO. 1 : On or before October 19, 1984, Johnny W. Richards, II acting in his fiduciary capacity and therefore as trustee of the interests of the sole heir, M. Wiley Catlett, whose father's estate he was administering did breach his trust to the estate and its sole heir, this in collusion with others as will be shown, and did cause great loss and damages to the estate and its sole heir, M. Wiley Catlett, plaintiff therein.

"Richards" in collusion with others, namely: John R. Lively, and his client, Florence Iona Catlett who is the alleged wife of Pharon C. Catlett, Deceased.. She is Pharon



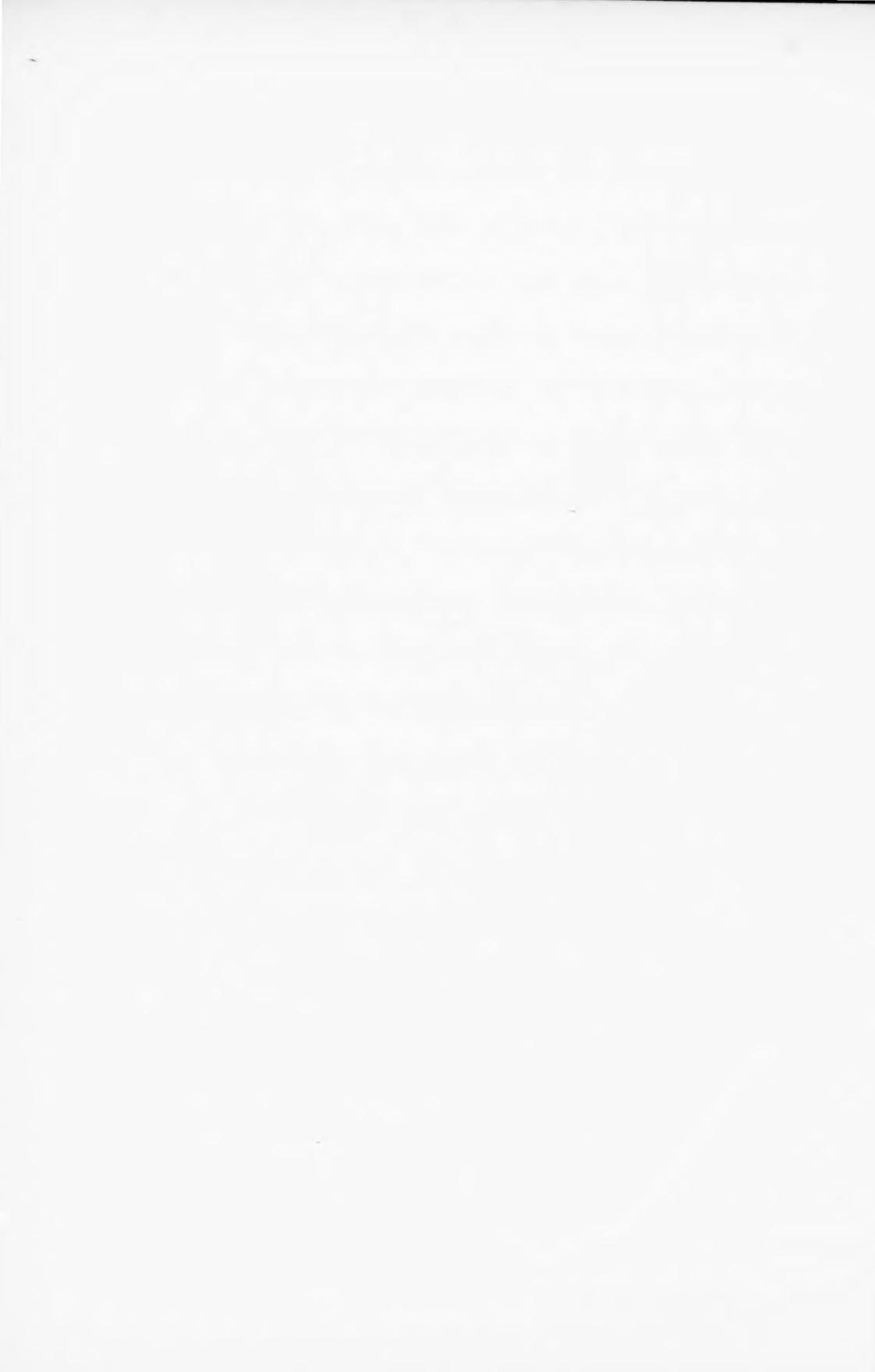
's administratrix and an alleged part owner of the "AUBREY, TEXAS FARM". "Richards" allegedly sold part of that farm, some 39 acres to the AUBREY GROUP, composed of:

Joseph R. Kilianski, 1/3rd owner  
David J. McGilvray, 1/3rd owner  
Sharon L. Tolcert, 1/3rd owner who was also the listing broker for the listing agent Del Barron Associates of Tarrant County, Texas, and against L. M. Tolbert who is shown on the contract of sale as the buyer for the AUBREY GROUP, did devise a diabolical scheme calculated to defraud the estate of Ernest Luther Catlett, Deceased and its sole heir, M. Wiley Catlett.

The scheme which they concocted was for "Richards" acting in his fiduciary capacity to sell some 39 acres (no legal partition has ever been made of the AUBREY, TEXAS FARM) of land located in Denton County, Texas purportedly belonging to the estate - see the contract of sale and the Warranty Deed, No. 57214, vol 1511, pp. 17 thru 20, Real

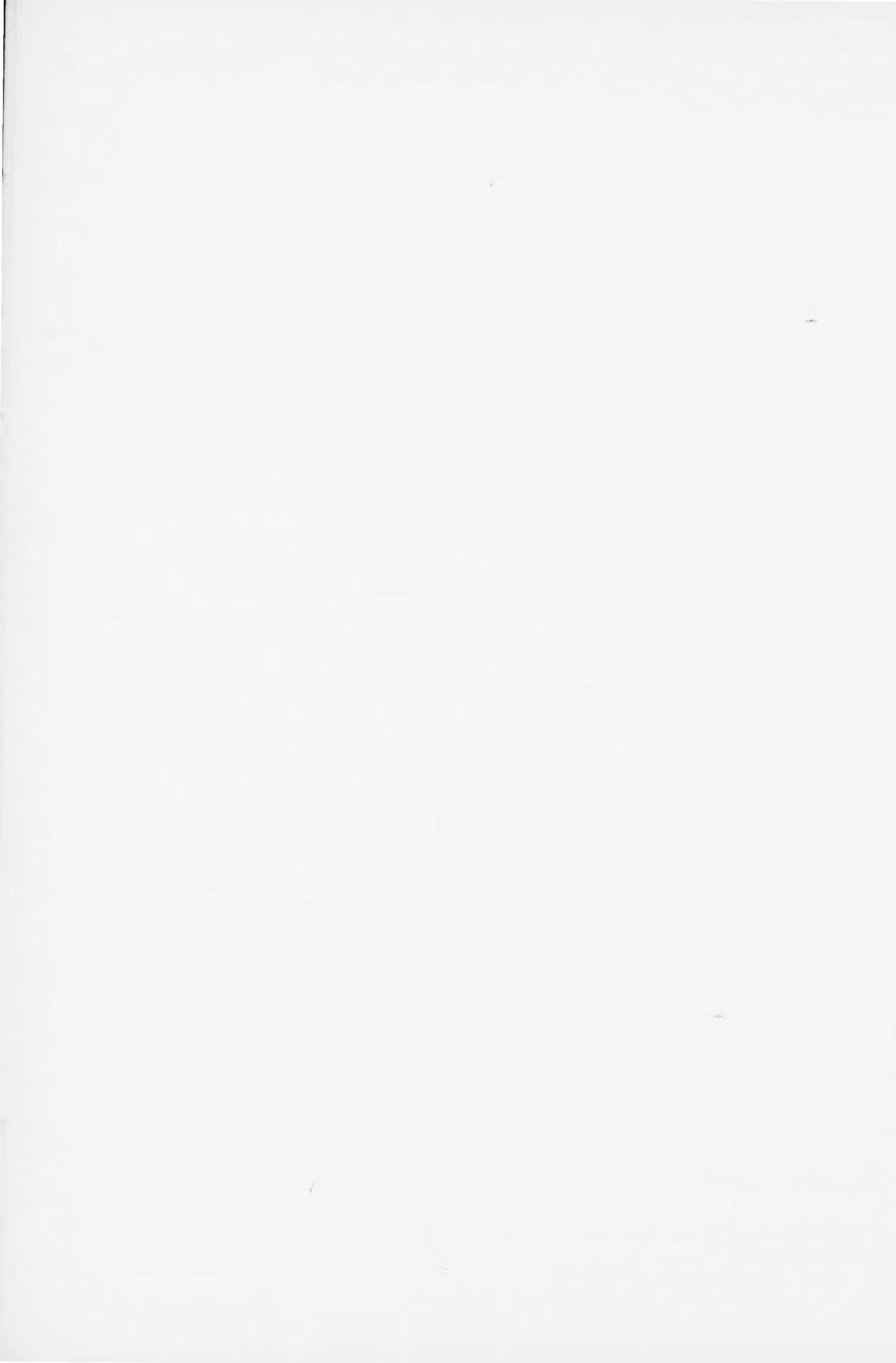


Property Records of Denton County, Tx., to the AUBREY GROUP, et al, for about \$2,000.00 per acre which was far below the true market value of that land at that time and all of those involved in the scheme knew it. The facts of this case as outlined in paragraphs therein clearly shows that the purported partition in Judge Narsutis' Judgments of October 4-14, 1982 were meaningless and void after the May 18, 1983 OPINION of the Second Supreme Judicial District Court of Appeals (APPENDIX "P", App. 50 thru 56) which reversed and remanded Cause No. 81-8158-B, below, Denton County,Tx. To date, there is no legal partition of the Aubrey, Texas Farm. Therefore, those descriptions contained in "Richards" "Motion for Authority to Sell Real Property" filed June 18, 1984, his Exhibit "A" therein and the Probate Court's ORDER of July 18, 1984 and said contract of sale and in the Warranty Deed are all meaningless and without legal foundation and void. Because no legal



partition has been made to determine just which part, if not all, of the Aubrey, Texas Farm belongs to the estate of Ernest Luther Catlett, Deceased. Further, it should be noted that some three and a half ( $3\frac{1}{2}$ ) years ago on April 6, 1981, attorney John R. Lively recorded telephone conferences with his client Florence Iona Catlett, Re: prospective purchaser and verbal offers of \$3,000.00 per acre by Pat Wilson, a real estate broker and a former Commissioner who was involved with the alleged partition of the estate with former Commissioner, Tom J. Fauts, and Realtor.

That is a loss of \$1,000.00 per acre from what the AUBREY GROUP paid. As a result of the conduct above alleged, in this claim, plaintiff has been and will be damaged in the amount presently unknown but believed to be in excess of \$34,500.00 in compensatory damages on only 1/6th interest in said land. Damages are based on a value of \$3,000.00 per acre



(which is the "offer made to "FLO" @ 4-6-81 by Pat Wilson, Registered Realtor and former Commissioner).

Plaintiff, "Wiley" believes based on the chain of title and the fact that his father was the sole survivor and the time frames involved and the construction of Charlie Catlett's Will, both Charlie and Pharon predeceased Ernest, making Ernest owner of the entire (100%) of the Aubrey, Texas Farm.

In doing the acts above alleged defendants as named in this particular claim and each of them have acted fraudulently and oppressively thereby making this claim an appropriate case for punitive damages against defendants so named individually, each of them and collectively in the amounts of \$103,680.00 or such other amounts as the court may deem proper.

Further this claim points out that "Flo" and her attorney, John R. Lively's partition suit, No. 81-8158-B, in the 158th District



Court, Denton County, Tx. is still "pending" and that they neglected to name therein all of the necessary parties - some of whom they concealed. There has been NO LEGAL PAP- TITION made of said farm as will be shown in "ARGUMENT ON QUESTION NO. VII." herein.

Therefore, the estate's share or particu- lar part has not been determined under Texas Law.

In the alternative, and without waiving the foregoing, plaintiff-"Wiley" states that the Court should declare a Constructive Trust. This for the protection of the interest of M. Wiley Catlett, sole heir of Ernest Luther Catlett and for the further reason that the chain of title will show that M. Wiley Catlett inherited the whole, 100%, 6/6th's of the Aubrey, Texas Farm. See the copy of the "Authority of the Chain of Title and Con- struction of Charlie's Will which is attached as Exhibit "J" in "Wiley's" Complaint and see APPENDIX "F", App. 10 & 11 and APPENDIX



"S", App. 61 thru 71 therein.

Because "Richards" was acting in his fiduciary capacity, he is accountable in equity and law. STRATES v. DIMOTSIS (CA5th - 1940) 110 F2d 374, cert denied, 311 US 666, s 85 L.E. 427, 361 S.Ct. 24. See also, DOING v. RILEY, 176 F2d 449, at p. 457, "(15) constructive trust is imposed not because of the intention of the parties but because the person holding title of the property would profit by a wrong or would be unjustly enriched if she were permitted to keep the property."

CLAIM NO. 2: The allegations of John R. Lively in his Authenticated Claim filed on January 25, 1985 (note the date of that claim) in connection with the Estate of Ernest Luther Catlett, Deceased, in the Probate Court of Tarrant County, Texas that he was the owner of a claim in the amount of \$42,228.00 in legal fees allegedly incurred as a result of a purported breach of contract by the "prior administrator of this Estate" (not a legal entity) were intentionally false and misleading and were intended to and did in fact result in a fraud upon the Court and upon the



Estate of Ernest Luther Catlett, Deceased, and its sole heir, M. Wiley Catlett, who is Petitioner herein. As a result of Lively's fraud, the Judge of the Probate Court of Tarrant County, Texas, signed his Order approving the payment of Lively's claim and authorizing payment (see APPENDIX "W", App. 80 & 81) by Johnny W. Richards, II, Successor Administrator, in the amount of \$41,684. out of the assets of the Estate of Ernest Luther Catlett, Deceased.

Petitioner, as sole heir of his father, Ernest Luther Catlett, and the only person entitled to receive distribution from any assets of the Estate of Ernest Luther Catlett, Deceased, remaining on hand at the close of Administration, has suffered actual damages as a result of the above-described fraud by Lively in the amount of \$41,684.00 and is entitled to recover his damages from John R. Lively.

Petitioner's claim is not barred by res



judicata because extrinsic fraud in connection with procuring judgment renders the judgment null and void and, therefore, the order of the Tarrant County, Texas Probate Court of February 8, 1985 (APPENDIX "W", App. 80 & 81) No. 77-2726 approving Lively's above-described authenticated claim is void.

CLAIM NO. 3: The actions complained of by John R. Lively were performed with the knowledge that he had no contract with the prior Administrator of the Estate of Ernest Luther Catlett, Deceased. Lively's allegations were, therefore, intended to defraud the Estate and its sole heir by recovering a highly excessive claim for attorneys' fees out of the Estate of Ernest Luther Catlett, Deceased, to which fees he was not entitled.

Therefore, the actions of John R. Lively complained of herein constituted willful and intentional fraud as a result of which Petitioner has suffered actual damages in the amount of \$41,684.00, and Petitioner is en-



titled to recover exemplary damages from John R. Lively, which exemplary damages Petitioner alleges to be at least \$300,000.

CLAIM NO. 4: Johnny W. Richards, II, While acting as Successor Administrator of the Estate, knew that the allegations contained in Lively's Authenticated Claim complained of herein were false and misleading and that Lively had no contract with the prior Administrator of the Estate that Richards was representing. Further, Richards made no attempt to notify Petitioner of Lively's claim, although a written request for such notification had been made on May 24, 1983 to Sarraine S. Krause the prior Successor Administrator, and although Petitioner is the sole heir of Ernest Luther Catlett, Deceased.

In allowing Lively's Authenticated Claim, and in presenting the claim to the Probate Court of Tarrant County, Texas for approval for payment out of the assets of the Estate

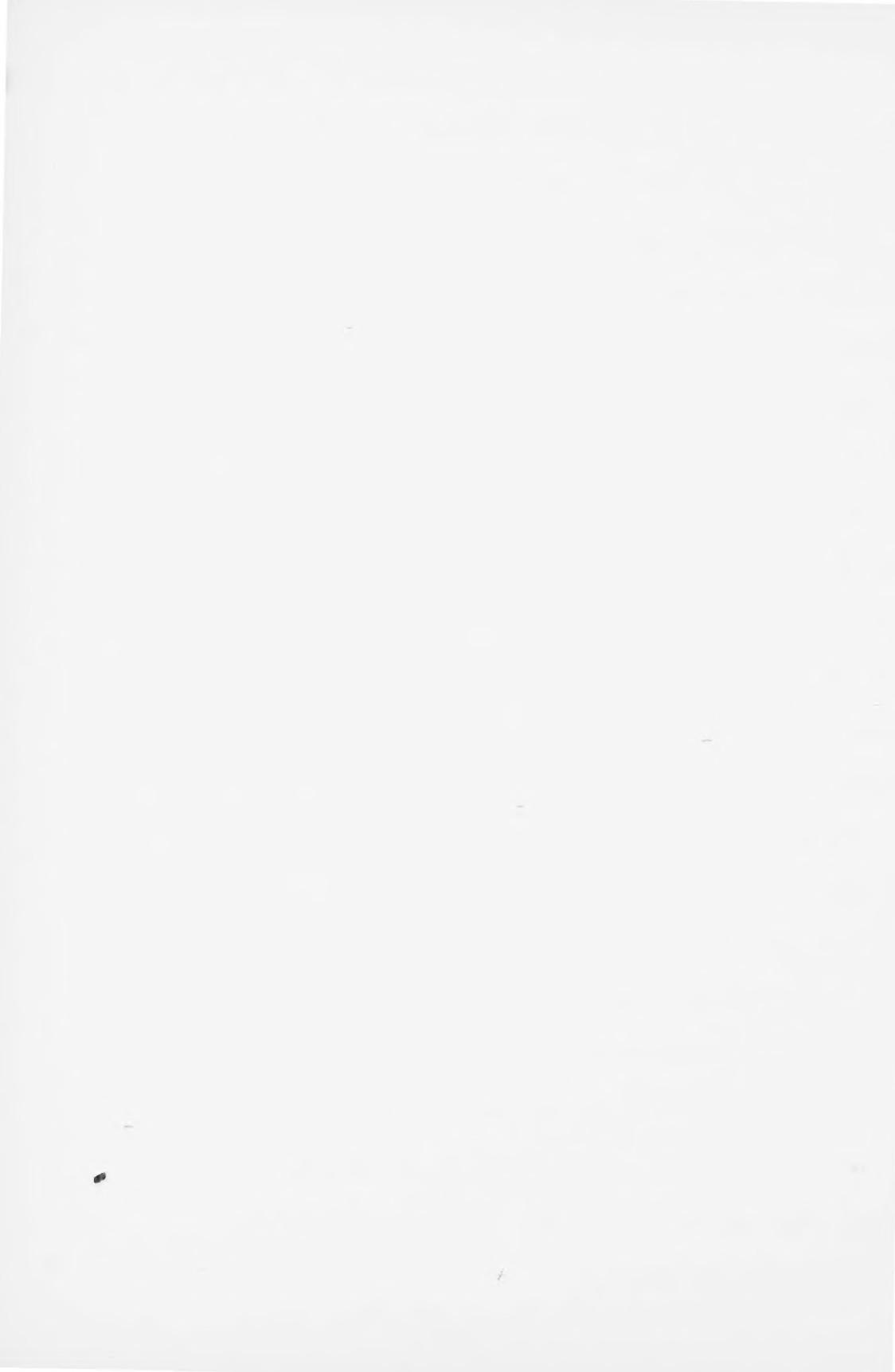


of Ernest Luther Catlett, Deceased, without any notice to Petitioner of the claim, Richards participated in Lively's fraud upon the Court and upon the Estate and its sole heir.

As Successor Administrator of the Estate of Ernest Luther Catlett, Deceased, Johnny W. Richards, II, had a fiduciary duty to the Estate and its heir to conserve Estate assets, to investigate the propriety of any claims against the Estate, and not to mismanage or squander said assets by allowing frivolous or fraudulent claims.

Johnny W. Richards, II, by participating in the fraud committed upon the Estate by John R. Lively, also committed fraud and thereby breached his fiduciary duty to the Estate of Ernest Luther Catlett, Deceased, and its sole heir, M. Wiley Catlett.

Therefore, Petitioner is entitled to recover his actual damages as heretofore alleged from the surety on the Administrator's



bond of Johnny W. Richards, II, which surety is Western Surety Company.

Further, because Richards breached his fiduciary duty to the Estate of Ernest Luther Catlett, Deceased, and to its heir, M. Wiley Catlett, and by committing fraud against the Estate and its heir, Petitioner is entitled to recover his actual damages as hereitofore alleged from Johnny W. Richards, II, Individually.

CLAIM NO. 5: The conduct of Johnny W. Richards, II, complained of in the Fourth Claim hereinto fore was knowing and willful and was intended to and did in fact result in the perpetration of fraud upon the Court and upon the Estate of Ernest Luther Catlett, Deceased, and upon its sole heir, M. Wiley Catlett. Therefore, Petitioner is entitled to recover exemplary damages against Johnny W. Richards, II, individually, which exemplary damages Petitioner alleges to be at least \$300,000.00



CLAIM NO. 6: Petitioner is entitled to receive pre-judgment interest on his actual damages of \$41,684.00 from February 8, 1985 until paid, at the legal rate, compounded daily.

CLAIM NO. 7: In the alternative, and without waiving the foregoing, Petitioner alleges that the actions of Johnny W. Richards, II, and the Probate County Clerk of Tarrant County, Texas, in failing and refusing to notify him or his attorney of record of the Authenticated Claim of John R. Lively, and the proceedings in connection therewith as well as the Claim of Attorney Steven J. Williams for \$5,172.48 in alleged attorneys' fees paid on March 11, 1985 by Johnny W. Richards, II, as well as other wrongs of mismanaging and squandering in connection with his father's Estate after Petitioner had filed a request for notice pursuant to Texas Probate Code, Section 33(j) violated Petitioner's rights of due process under the Vth



and XIVth Amendments of the Constitution of the United States (APPENDIX "X", App. 82).

Under the laws of the State of Texas, the property of an ancestor vests immediately upon death of the ancestor in the intestate's heirs at law. Petitioner is the sole heir of Ernest Luther Catlett, and is therefore, the owner of any and all property of the decedent in the hands of Successor Administrator, Richards. Therefore, the actions of Richards and Madrin Huffman, as Probate County, Clerk of Tarrant County, Texas, in failing to notify Petitioner of the proceedings in connection with Lively's Authenticated Claim and others and other matters after notification by "Wiley's" attorney of record, William L. Smith, Jr., of Denton, Texas of their desire to be notified and to be heard in connection with all the proceedings therewith, deprived Petitioner of his land without due process of law in violation of his rights under the Vth and XIVth Amendments to the Constitution of the United States.



As a result of the denial by Defendants, Richards and Madrin Huffman, County Clerk of Tarrant County, Texas, of Petitioner's rights of due process (APPENDIX "X", App. 82), Petitioner has been damaged in the amount of \$41,684.00 and \$5,172.48 a total of \$46,856. 48, Lively's and Williams' claims plus other amounts that was paid by Richards, plus interest on those amounts at the legal rate, compounded dailey from February 8, 1985 and March 11, 1985, until date of payment thereof.

WHEREFORE, PREMISES CONSIDERED,

Petitioner prays that Respondents-Defendants as herein named be cited to appear and answer herein, and upon trial hereof Petitioner-Plaintiff have judgment against defendants as follows:

CLAIM NO. 1:

1. For actual damages in the amount of \$34,560 or the fair and just amount;
2. For exemplary damages of at least \$103,680 or the fair and just amount;
3. In the alternative, impose a constructive trust;



CLAIM NO. 2:

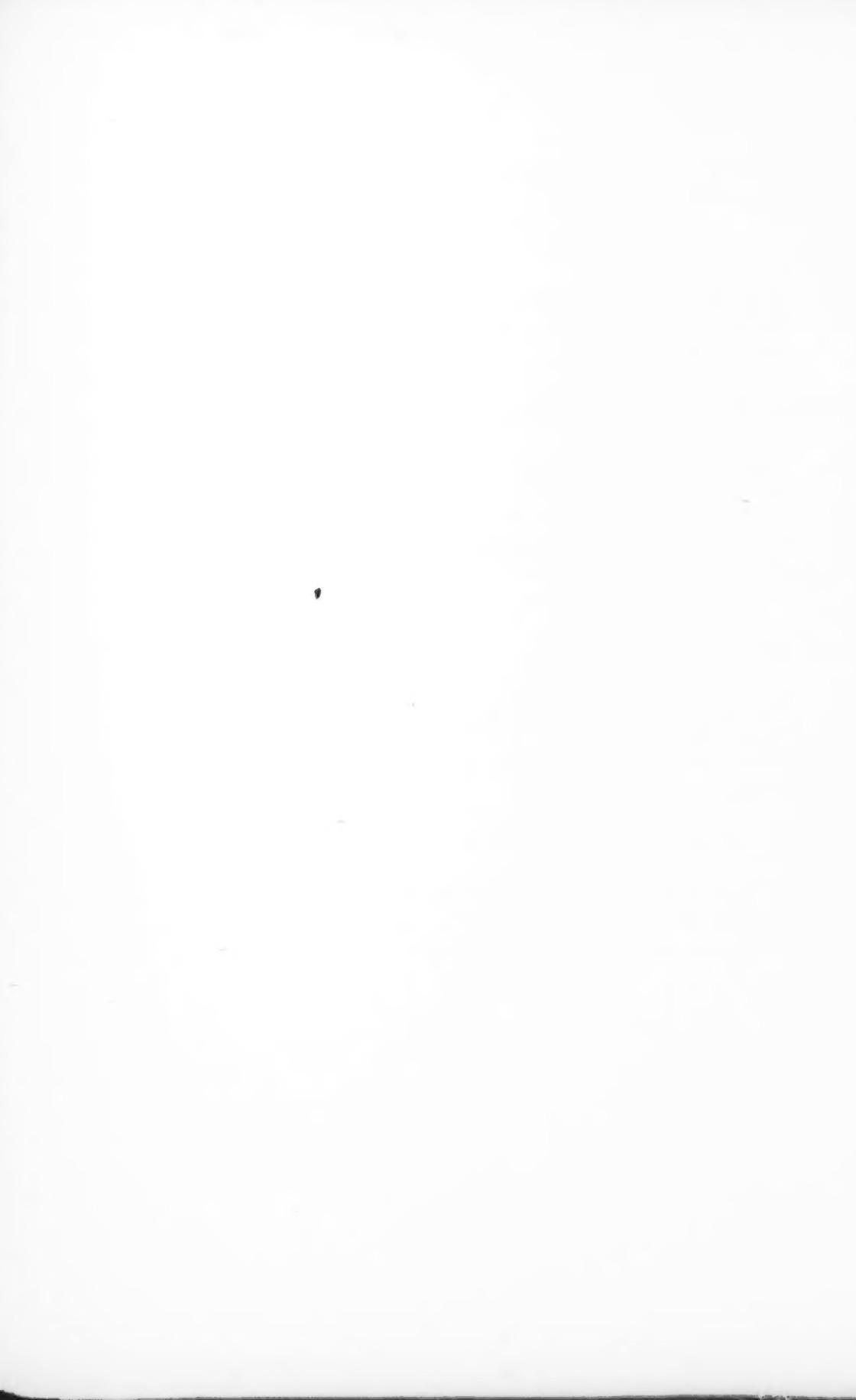
4. For actual damages in the amount of \$41,684.00; against John R. Lively; or Johnny W. Richards, II, Individually;
5. For exemplary damages of at least \$300.00.00; against Defendant John R. Lively;

CLAIM NO. 3: and CLAIM NO. 4:

6. For actual damages in the amount of \$5,172.48; against Johnny W. Richards, II, Individually;
7. For exemplary damages of at least \$300.00.00; against Defendant Johnny W. Richards, II, Individually;

CLAIM NO. 5:

8. For pre-judgment interest on \$41,684 from February 8, 1985, and \$5,172.48 from March 11, 1985 until paid with compounding daily;
9. For costs of suit; and
10. For such other and further relief, both in law and in equity, to which Plaintiff may show himself justly entitled.



## ARGUMENTS

This case is not a "REVIEW" of any former Texas State Court case by a Federal District Court as Judge Paul Brown mistakenly supposed and could not be; however, assuming arguendo, which Petitioner strongly contends otherwise, that this case could only be "reviewed" by The Supreme Court of the United States; if so, Petitioner is indeed in the right court. (Question No. 1, page 1 herein)

The facts in "Wiley's" claims clearly shows that the heir's claims is for money due to the squandering of the assets by "RICHARDS" in cooperation with other defendants as described in the claims, some \$41,684.00 plus in actual damages and som \$600,000.00 plus in exemplary damages. (See pages 8 thru 23 herein)

Contrary to "RICHARDS" AND "LIVELY" AND "FLO", et al see EDDY V. EDDY (CA6th - 1903) 168 F 590, cert. denied, 214 US 518, 53 L.Ed.



1065, s29 S.Ct. 699, at 601, where the court said:

"It is contended by counsel for the appellees that the accounting should not be undertaken by the federal court, but should be left to the probate court. We, are, however, of a different opinion. The duty of the federal court in such cases is not discharged by the mere declaration of rights of parties in general terms which are abstract and reach no concrete results. Having jurisdiction to determine the validity of a claim, it has authority to settle and determine its scope and limitation, and, if the claim is for money the amount which the plaintiff is entitled to receive. To this extent, at least, the power of the federal court is as ample as that of the state court, and, when the former is invoked by a citizen of another state, its exercise cannot rightfully be denied."

"Ernest's Estate" had no funds, only an interest in "Wiley's" grandfather and grandmother's homestead of @ 225.1 acres - the AUBREY, TEXAS FARM; however, it did have obligations.

"Wiley's" father "Ernest" was about 86 years old and suffered from senile dementia and chronic organic brain syndrome (APPENDIX "T", App. 72 & 73), see Dr. Walter L. Geyer's



letter of 7-26-76. Ernest had two brothers, Charlie and Pharon, who were in a confidential & fiduciary relationship with Ernest; therefore, they owed him a duty not to take advantage of Ernest's old age and illnesses.

STRATES v. DIMOTSISS (CA5th - 1940) 110 F2d 374, 376, writ, cert.denied, 311 US 666, 85 L.Ed. 427, 61 S.Ct. 24, where Circuit Court Judge, McCord stated: ". . . this suit was brought by the surviving heirs of George Strates to impress a trust upon certain real estate in Corpus Christo Texas" On p. 376 the court said: "(5,6) . . . Moreover, George Strates and J. L. Dimotsis stood in a further confidential relationship through close ties of kinship, (See CofA p. 7 F C, par. 31 in Exhibit "J" in "Wiley's" Complaint)

Further, the facts and events in the above claims only occurred, since "RICHARDS" became the Successor Administrator on March 22, 1984; therefore, they could not be a "review" of any Texas State Court case, heretofore made by a Federal District Court.

Question No. 2 (see page ii herein) deals with "Richards" defrauding "Ernest's Estate" and its sole heir by paying on February 8, 1985, \$41,684.00 of "Lively's" alleged claim.



APPENDIX "Y", App. 83 & 84, page 1 only  
of JOHN R. LIVELY'S claim reads in part:

" 1. JOHN R. LIVELY ("Claimant") is the owner of a claim against this Estate in the sum of \$42,228.00 . . ." The language of "LIVELY'S" alleged claim is clear and unambiguous. In FROST NAT. BANK OF SAN ANTONIO v. NEWTON, TEX.SUP. CT., 1977, 554 S.W.2d 149 on p. 153 that Court stated: "(2) . . . Therefore, the true meaning of the will must be determined by construing the language used within the four corners of the instrument, "REPUBLIC NATIONAL BANK of DALLAS v. FREDERICKS, TEX.SUP.CT., 1955, 283 S.W.2d 39, 49, 155 Tex. 79. No speculation or conjecture regarding the intent of the testatrix is permissible where, as here, the will is unambiguous, and we must construe the will based on the express language used therein. HUFFMAN v. HUFFMAN, 161 Tex. 267, 339 S.W.2d 885 (1960)

That alleged claim by "LIVELY" that he is the owner of a claim against this Estate, is a sham and a fraud on the estate and its sole heir, M.Wiley Catlett. "LIVELY" in his alleged claim says that he "is" the owner of a claim against "this Estate". If he really "is" the owner, then he must have a contract of a judgment in the amount of \$42,228.00



which would prove that "LIVELY" "is" the owner of such a claim against "this Estate".

"LIVELY" doesn't have any such contract or judgment and "this Estate" , is not a legal entity. "LIVELY" knew that he didn't have any such contract or judgment or claim when he presented it to "The Estate of Ernest Luther Catlett, Deceased", "this Estate".

"An Estate" or Estate" or "this Estate", in Texas is not a legal entity and cannot sue or be sued or file a motion. "The estate of a deceased person is not a legal entity, and cannot sue or be sued as such. BROOKS v. MAHOZ (1977) Civ.App.Tex., 554 S.W.2d 292, n.w.h., see p. 293; NEBLETT v. BUTLER (1942) Tex.Civ.App. 162 S.W.2d 458, writ ref.w.o.m. (estate cannot sue, or appeal or file brief); CAMELLA DICED CREAM CO. v. CHANCE (1966 CA) 339 S.W.2d 558; PRICE v. ESTATE of ANDERSON (1975 Tex.) 552 S.W.2d 690 see p. 691 (1,2)".

Therefore, "LIVELY'S" alleged claim is a sham and a fraud and void and a nullity. He further states: "This claim is founded upon reasonable and necessary legal services incurred as the result of the breach of contract by the prior administrator of the Estate." In that sentence, "LIVELY" indicates that he has a "contract" - never produced.



"LIVELY" nor the Successor Administrator, "RICHARDS" never produced any alleged contract, nor is "RICHARDS" name even mentioned in "LIVELY'S" alleged claim for \$42,228.00 in attorney's fees which is not proper under Art. 2226, V.A.T.S. - a suit for statutory attorney fees as a separate action cannot be maintained.

NATIONAL HOMES CORP v. C. J. BUILDERS, INC., (CA 1965) 393 S.W.2d 949, err. dismd. "A suit for statutory attorney fees cannot be maintained as a separate cause of action." JON-T FARMS, INC. v. GOODPASTURE, INC. (CA 1977) 554 S.W.2d 743, RNRE, at p.752 (17-18).

The word "attached" alone in that third sentence of "LIVELY'S" claim is not sufficient under Texas Law to incorporate his document - Exhibit "A" - into his alleged claim. TAYLOR v. REPUBLIC NATIONAL BANK OF DALLAS, et al (Tex.Civ.App. 1970) 452 S.W.2d 560, ref.n.r.e., at p. 563, "2,3) 1. The word "attached" is not equivalent to "incorporated" . . .(4) 2. The document in question is not sufficiently described in the will to be capable of identification . . . Brooker v. Brooker, 130 Tex. 27, 106 S.W.2d 247, 253 (1937); Adams v. Maria, 213 S.W. 622 (Tex. Comm'n. 1929); Allday v. Spengler, 343 Ill. 476, 175 N.E. 781 (1931)

In this case, Texas law is controlling.

Further, "LIVELY'S" client "FLO" on or



about October 25, 1982 filed a previous claim for "LIVELY'S" attorney's fees in the amount of \$8,840.00 on October 25, 1982 in the same Probate Court and Cause No. 77-2726 Tarrant County, Texas which first claim was rejected by the Administrator on November 15, 1982 which first claim for "LIVELY'S" attorney's fees was not sued on by her in the Texas District Court within 90 days as required by Texas Law, V.A.T.S., Prob., Sections, 308, 309, 310, 313; RUSSELL & ALLEN v. DOBBS (1962 - Tex.) 163 Tex. 282, 354 S.W. 2d 373 at p. 286, where the Texas Supreme Court said: "Section 313 provides that when a claim or a part thereof has been rejected by the representative the claimant shall institute suit thereon within ninety days after such rejection, or the claim shall be barred. . . ."

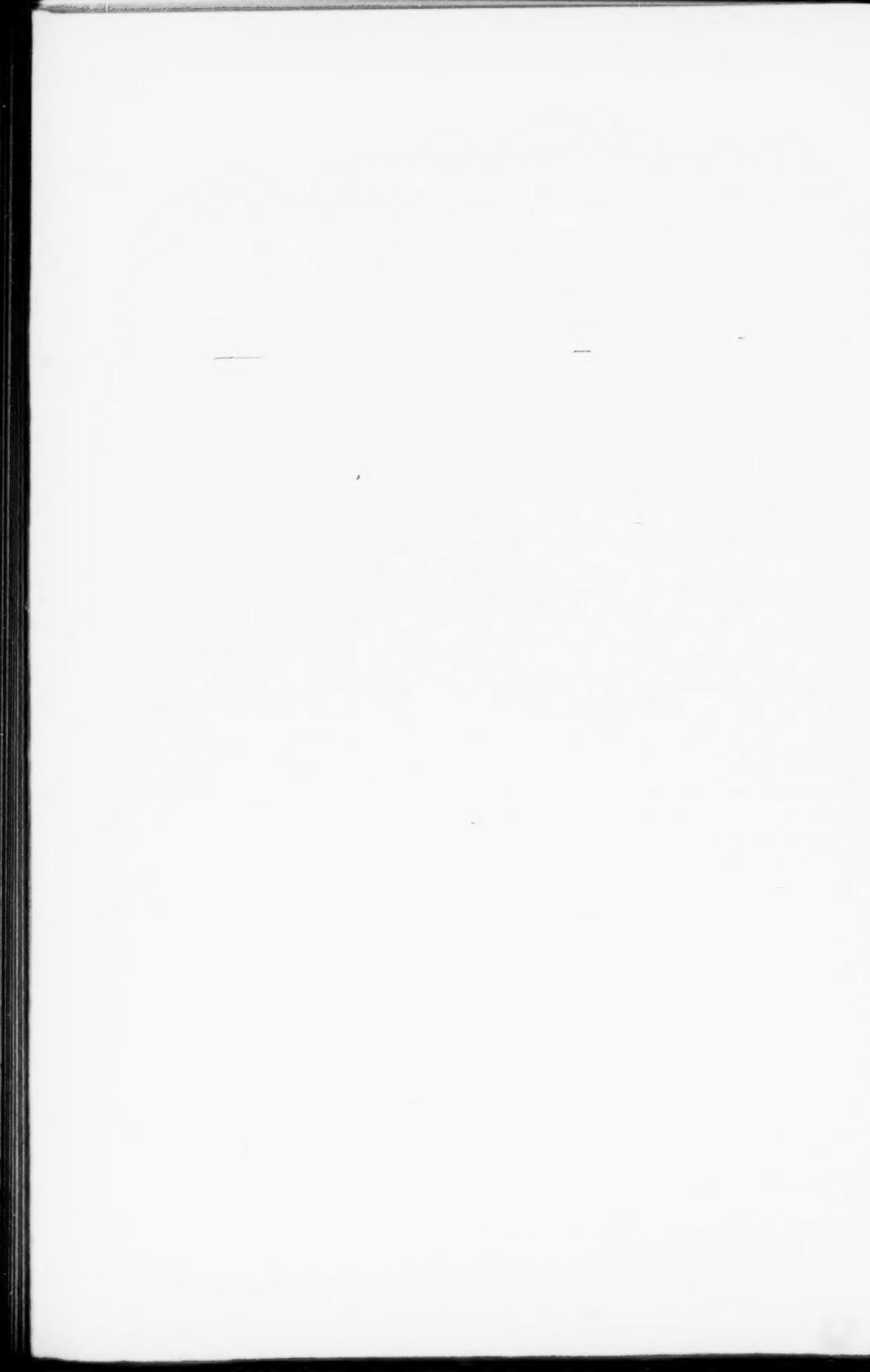
The exception to this rule, would be as it relates to the heir, M. Wiley Catlett, who is a nonresident of Texas and who was never notified of any of the proceedings in the Probate Court as requested on May 24, 1983 (See Pl. Ex. "G" in the Complaint)



"RICHARDS" knew of the MARCH 22, 1984  
(FILE MARKED) "INVENTORY, APPRAISEMENT &  
LIST OF CLAIMS" - OF WHICH DOCUMENT THE  
HEIR WAS NOT NOTIFIED OF - SHOWING THAT THE  
FORMER ADMINISTRATOR, M. WILEY CATLETT, WAS  
OWED \$18,591.34(as of that date); yet, the  
heir never received any notice or hearing  
from either "RICHARDS" or the Probate  
Tarrant County, Texas Clerk as requested;

PENNOYER v. NEFF (1877) 95 US 714, 24  
L.Ed. 565 at p. 573; MULLANE v. CENTRAL  
HANOVER B. & T. CO. (1950) 339 US 306-321,  
94 L.Ed. 865, 70 S.Ct. 652 at 872 or 312;  
TULSA PROFESSION COLLECTION SERVICES, INC.  
v. POPE (1988) 485 US \_\_\_\_\_, 99 L.Ed.2d  
565, 108 S.Ct. 1340, Justice O'Connor de-  
livered the OPINION: This case involves  
a provision of Oklahoma's probate laws re-  
quiring claims "arising upon a contract"  
generally to be presented to the executor  
of the estate within 2 months of the  
publication of a notice advising creditors  
of the commencement of probate proceedings.  
. . . The question presented is whether  
this provision of notice soley by publica-  
tion satisfies the Due Process Clause.  
HELD to violate due process clause of  
14th Amendment.

Clearly, "RICHARDS" and Madrin Huffman,  
former Probate County Clerk violated  
"Wiley's" rights under the 5th and 14th  
Amendments of the Constitution of the United  
States to due process of law.

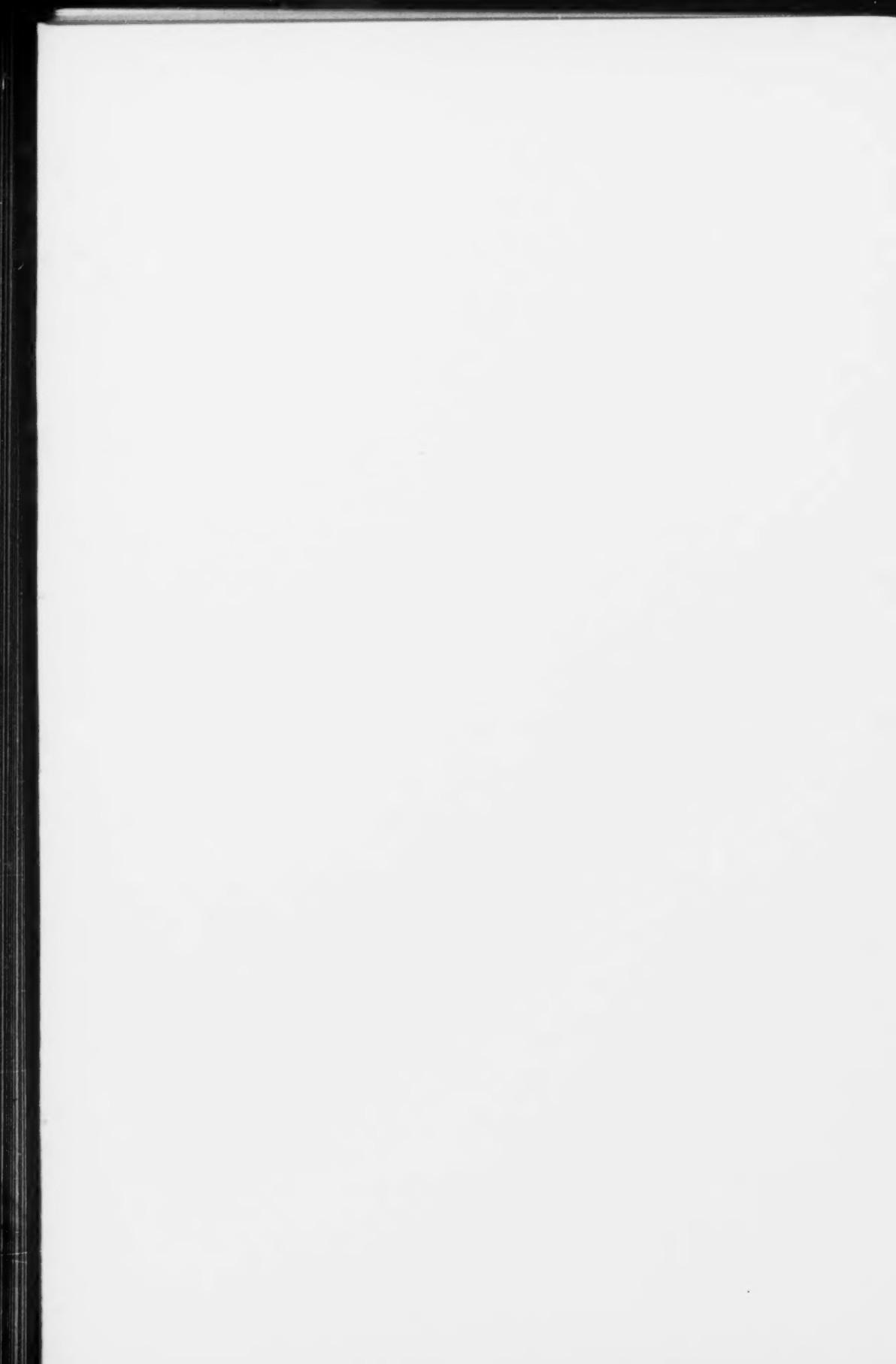


Further, as shown herein, "Wiley's" seven (7) claims against Successor Administrator and his surety and the other Respondents herein is directly in point with PAYNE v. HOOK, 1868, 7 Wall 425, 74 US 425, 19 L. Ed. 260 at 261-262 - the proper diversity of citizenships exists - is directly in point and controls the present case.

In that case, the plaintiff filed a bill in the federal court for Missouri against an administrator and the sureties on his official bond, to obtain her distributive share in a certain estate (that of her brother Fielding Curtis, who died intestate in Calloway County Missouri). Plaintiff was Ann Payne, a citizen of Virginia.

The object of the bill was to obtain relief against the fraudulent acts of the administrator, and to compel a true accounting of the administration, in order that the real condition of the estate could be ascertained and the complainant paid what belonged to her.

As mentioned on page 2 herein, the jurisdiction of the federal court was denied by the defendants, it was said that a resort



must be had to that probate court to correct the errors and frauds in the accounts of the administrator.

However, The Supreme Court has repeatedly HELD "that the jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States, which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power"; and that the equity jurisdiction conferred on the federal court is the same that the High Court of Chancery in England possesses, is subject to no limitation nor restraint by state legislation, and is uniform throught the different states of the Union.

It was therefore HELD that the federal court had jurisdiction to hear and determine the controversey, notwithstanding the peculiar structure of the Missouri probate system, and was bound to exercise it, if the bill, according to the received principles of



equity, states a case for equitable relief.

It was HELD that a court of chancery, as an incident to its power to enforce trusts and make those holding a fiduciary relation, account, has jurisdiction to compel executors and administrators to account and distribute the assets in their hands, and that the bill under consideration had the object and nothing more; that it sought to compel the defendant Hook to account and pay over to Mrs. Payne her rightful share in the estate of her brother, and in case he should not do it, to fix liability of the sureties on his bond.

In other words, an action against fiduciaries for an accounting is a proper ground of equitable jurisdiction.

The Subject was fully considered by The Supreme Court and the cases reviewed and the principles stated in WATERMAN v. CANAL-LOUISIANA BANK & TRUST CO., 215 US 33, 30 S.Ct., 10, 12, 54 L.Ed. 80, supra (See p. 84 or p. 43 therein, maintaining the right of Federal courts of chancery to exercise original jurisdiction in favor of creditors, legatees and heirs, to establish their claims and have a proper execution of the trust as to them." Eight cites omitted.



"Wiley's" Question No. III (page iv herein) deals with the fact that none of the defendants, file an "ANSWER", as such (See the District Court's Docket sheets.) Hence, no "reply" is possible or proper under Rule 7(a) Federal Rules of Civil Procedure; Wright and Miller, Federal Practice and Procedure; Civil Sect. 1185, note 28, p.17 and note 32, p.18, "Reply Improper" TRAYLOR v. BLACK, SIVAL. & BRYSON, INC. (CA8th, 1951)189 F2d 213 where the court said: "Reply not permissible except to counter-claim denominated as such, or by order or leave of court granted in its sound discretion."

Since none of the defendants filed any "ANSWERS" as such; they could not contain a counter-claim denominated as such. And none of their "Motions to Dismiss" contained any counter-claim denominated as such either.

Hence, no "reply" by Plaintiff was necessary nor appropriate, KANSAS-NEBRASKA NATURAL GAS CO. v. VILLAGE OF DSHLER, NEBRASKA (U.S.Dist. Ct. D.Nebr.1960) 192 F.Supp. 303 at p.311 where the court said; "(1) The service and filing herein of a reply by Plaintiff was neither necessary nor appropriate, Rule 7, Federal Rules of Civil Procedure, 28 U.S.C.

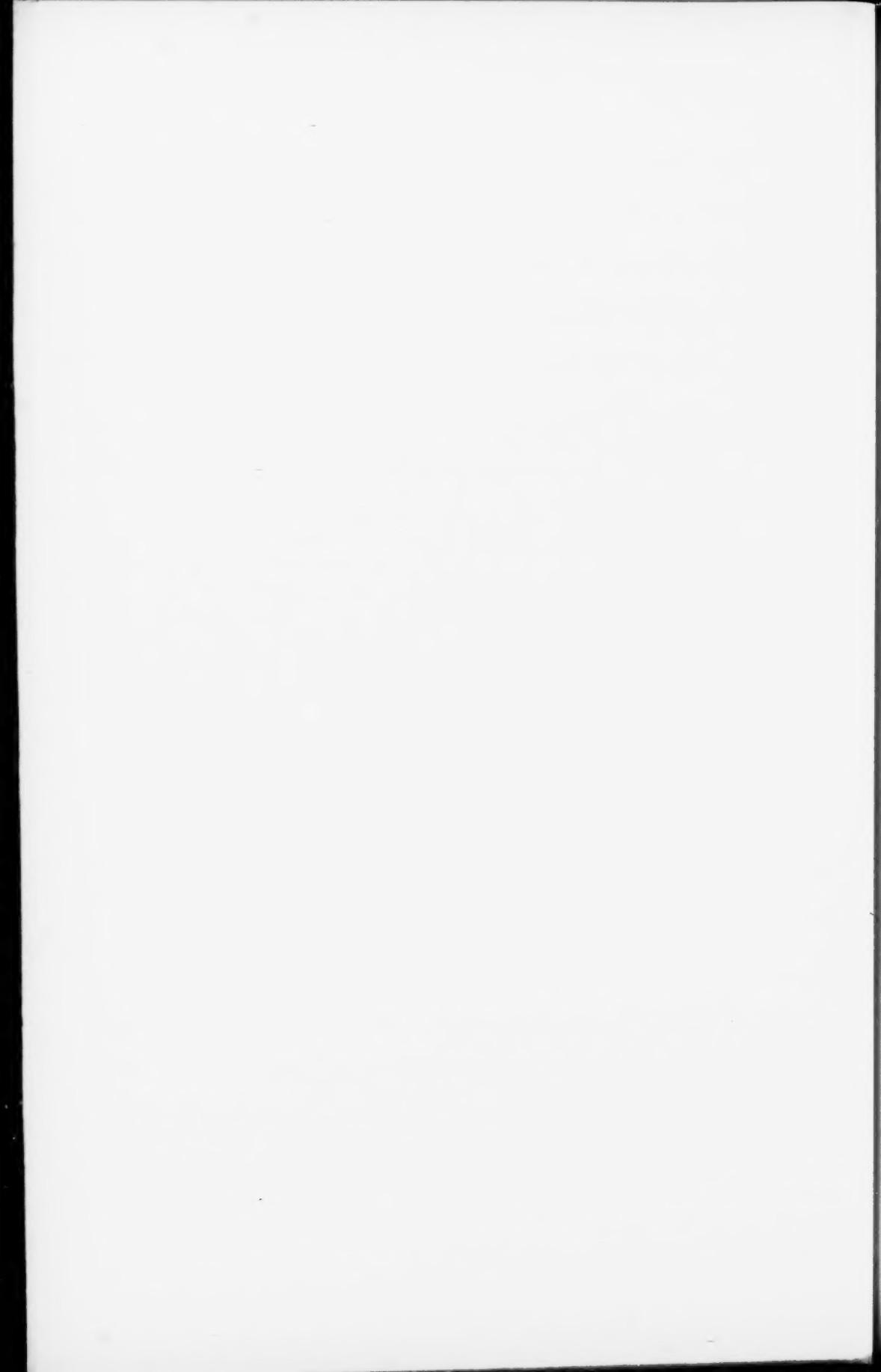


Judge Brown, U.S.Dist.Ct., did err in dismissing "Wiley's" complaint; since none of the defendants-respondents ever filed a "Pleading" as required by the F.R.C.P., Rule 7(a). (See p. 9 "Wiley's" brief)

"Pleading within meaning of Rule 7(a) does not include "motion to dismiss" complaint for failure to state cause of action"  
LIPPMAN, INC. v. HEWITT-ROBINS, INC (1977)  
E.D.Wis. 55 F.R.D. 439, 16 FR Serv.2d 199;  
Pleading. There shall be a complaint and an answer; 28 U.S.C., 7(a); Motions are not Pleadings (2A Moore's Federal Practice 2d. Ed., par. 7.05 accordingly, the filing of a motion to dismiss is not a responsive pleading. ZAIDI v. EHRICH (CA5th 1984) 732 F2d 1218; "Motion to Dismiss under Rule 12 is not a "Pleading" as defined by Rule 7(a) CHILVIS v. SECURITIES & EXCHANGE COMM (1979 ND Ga) 28 FR Serv.2d 1065

Further, under the F.R.C.P., res judicata and statute of limitations are deemed to be "affirmative defense" under Rule 8(c), 28 U.S.C.A., following sect. 723c. Therefore, those affirmative defences cannot be granted under a Rule 12(b) "motion to dismiss".

JONES V. MILLER (D.C.W.D.Penn 1942) 2 F. D.R. 479; JENKINS v. McKEITHEN (1969) 395 US 411, 89 S.Ct. 1843, 23 L.Ed.2d 404 at 416-417; CONLEY v. GIBSON (1957) 355 US 41, 2 L.E. 2nd, 80, 78 S.Ct. 99 at p. 84; HOLMBERG v. HANNAFORD (1939, D.C.OHIO) 28 F.Supp. 216



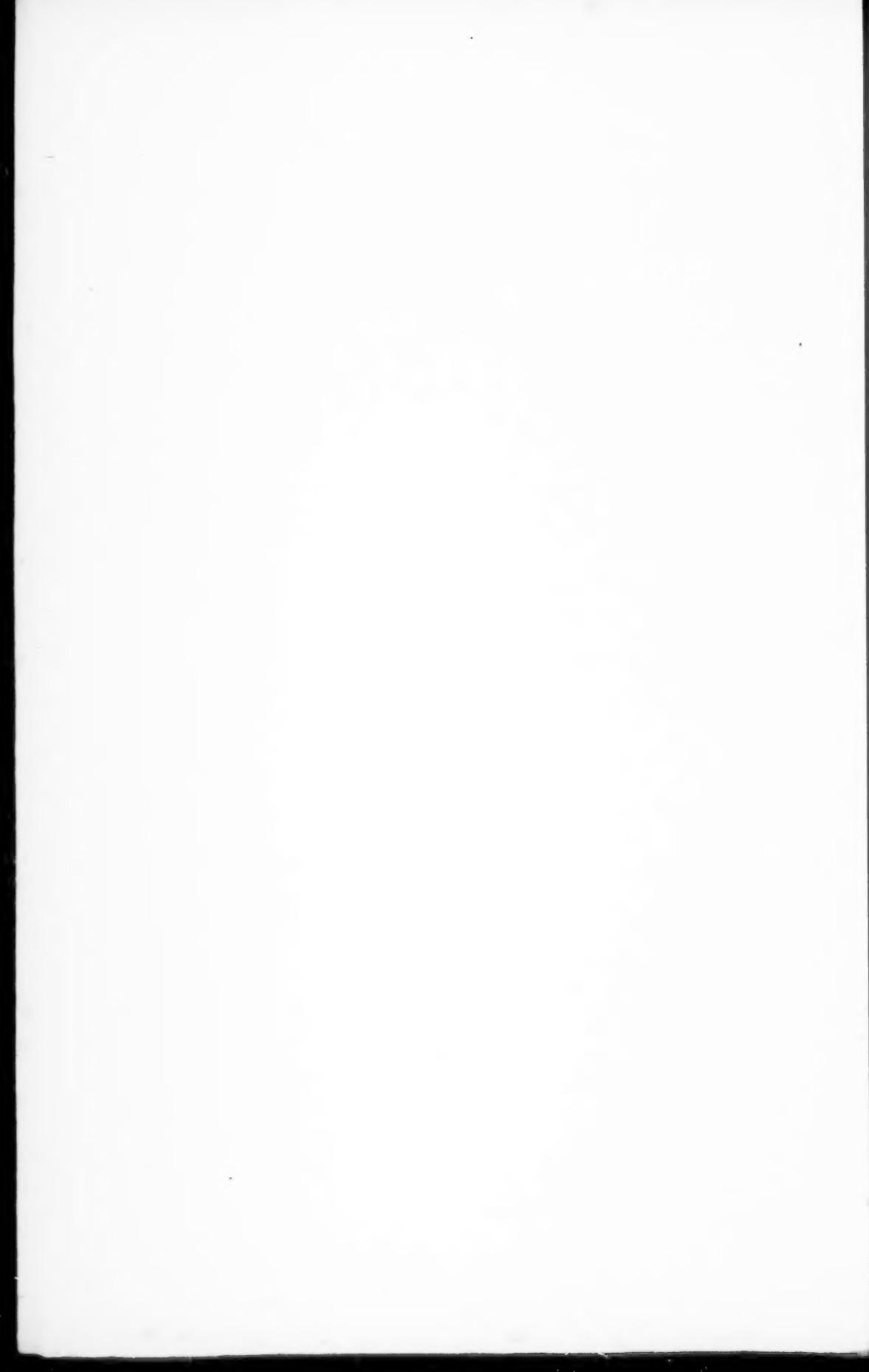
Further and perhaps, most importantly to "Wiley" - Petitioner who is not a lawyer, is the fact that Judge Paul Brown mislead him through Judge Brown's half or partial quote of the "standard" by which a complaint can be dismissed under a motion to dismiss, Fed. Rules, Civ. Proc., Rule 12(b)(6), 28 U.S.C.A.

Judge Brown on page 3, par. 1 of his MEMORANDUM OPINION of April 18, 1989 (APPENDIX "A" & "B", App. 1 thru 4 thereof) reads:

"In considering the defendant's various motions to dismiss, the allegations in plaintiff's complaint must be taken as true and construed in a light most favorable to plaintiff. HISHON v. KING & SPALDING, 104 S.Ct. 2229 , 2232 (1984)."

Since, Judge Brown used that partial and inadequate "standard" injustice has been done to "Wiley's" complaint. The leading case on "Pleading" is CONLEY v. GIBSON, 1957, 355 US 41, 2 L.Ed.2d 80, 78 S.Ct. 99 at 84 or 45 where Justice Black states:

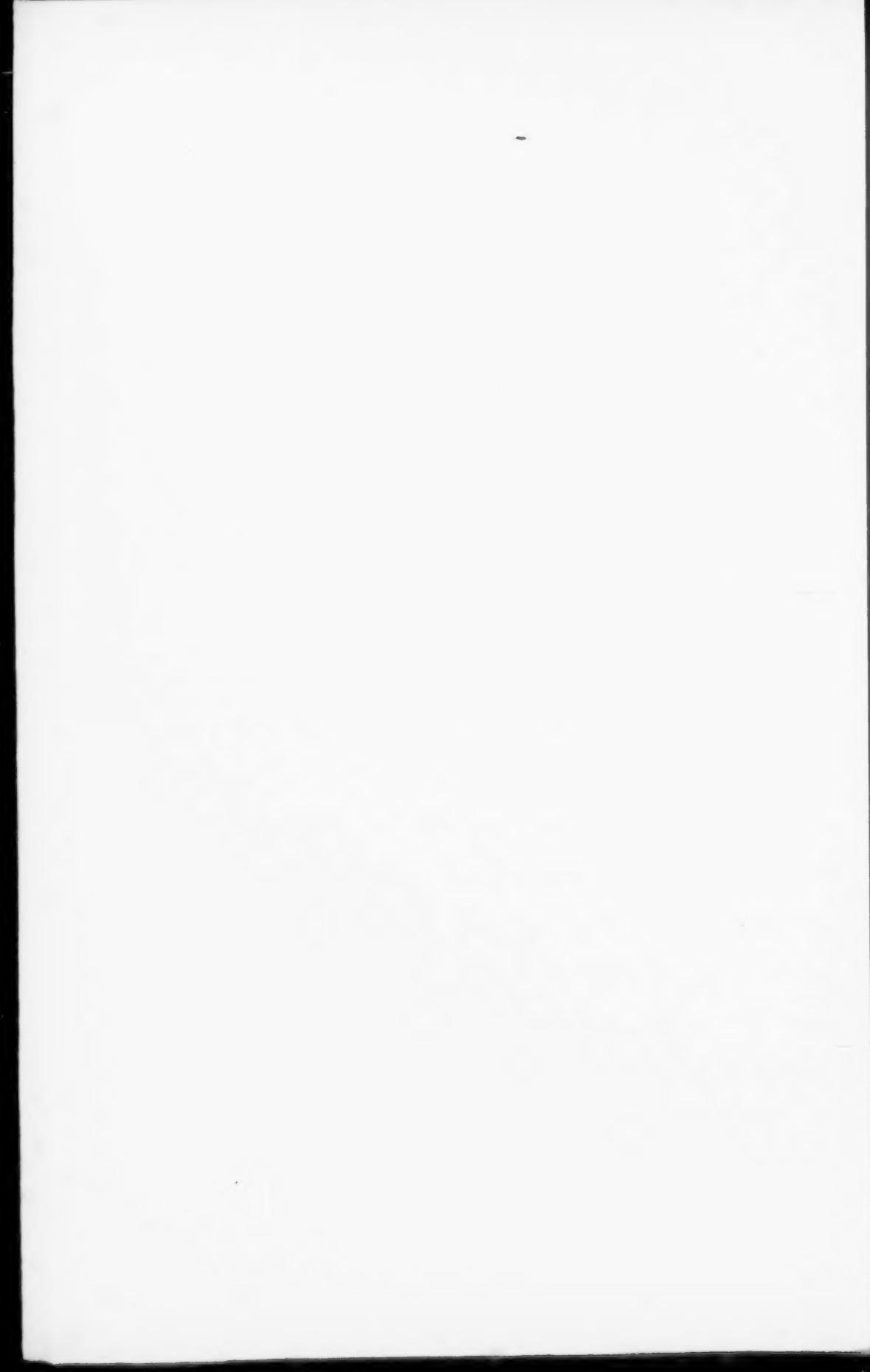
"In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ; Hishon v. King & Spalding, supra, cites CONLEY v. GIBSON on p. 2232. Conclusion: Judge Brown did ERR.



"Wiley's" question No. IV. (page v. herein) deals with his request in his complaint to have the Federal District Court to construe just two sentences of the SECOND PROVISION of his uncle Charlie Catlett's will (See complaint Ex. "A" & "J", thereof, Fed.R.Civ.P., Rule 10(c) an exhibit which is a part of the complaint is a part thereof for all purpose.) And the FIFTH CIRCUIT also was requested in "Wiley's" opening and reply briefs to construe Charlie Catlett's will.)

(See APPENDIX "F" and "S", App. 10 & 11 and App. 61 thru 71 thereof.) Where there is a diversity jurisdiction, as in the instant action, the FIFTH CIRCUIT COURT OF APPEALS has HELD that it was proper for the U. S. District Court to declare judgment for the construction of a portion of a will under which the plaintiff claimed that both it and the defendant were remainderman of a trust created by the will.

The court stated the general proposition that a suit between parties seeking declaration of their rights in a remainder interest

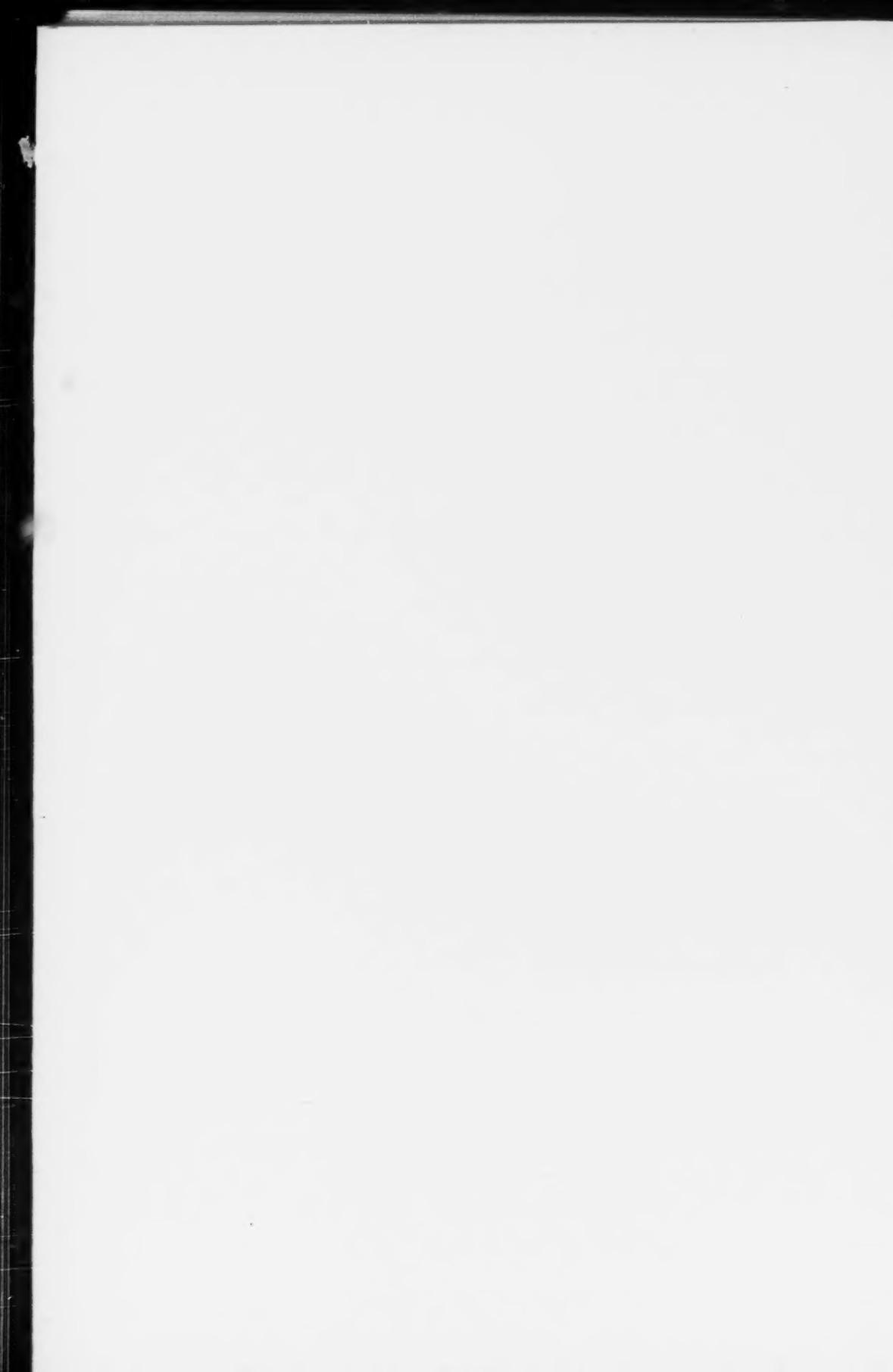


devised under a testamentary trust is a  
civil suit or controversey within the mean-  
ing of federal jurisdiction and not a pro-  
scribed probate proceeding, where the suit  
does not attack the will but affirms it,  
seeking only construction of its terms"

NATIONAL AUDBON SOCIETY v. MARSHALL (CA5th  
- Ga 1970) 424 F2d 717.)

"Wiley" is not attacking "Charlie's" will,  
he affirms it and is seeking only a con-  
struction of two sentences in the SECOND  
PROVISION: therefore, it is proper for the  
Federal Court in Sherman, Texas to construe  
said will, which is needed to determine  
whether "Ernest" or his brother, "Pharon",  
who predeceased "Ernest" will inherit 100%  
or just what percentage of "Wiley's" grand-  
father and grandmother's 225.1 acre homestead  
located near Aubrey, Texas.

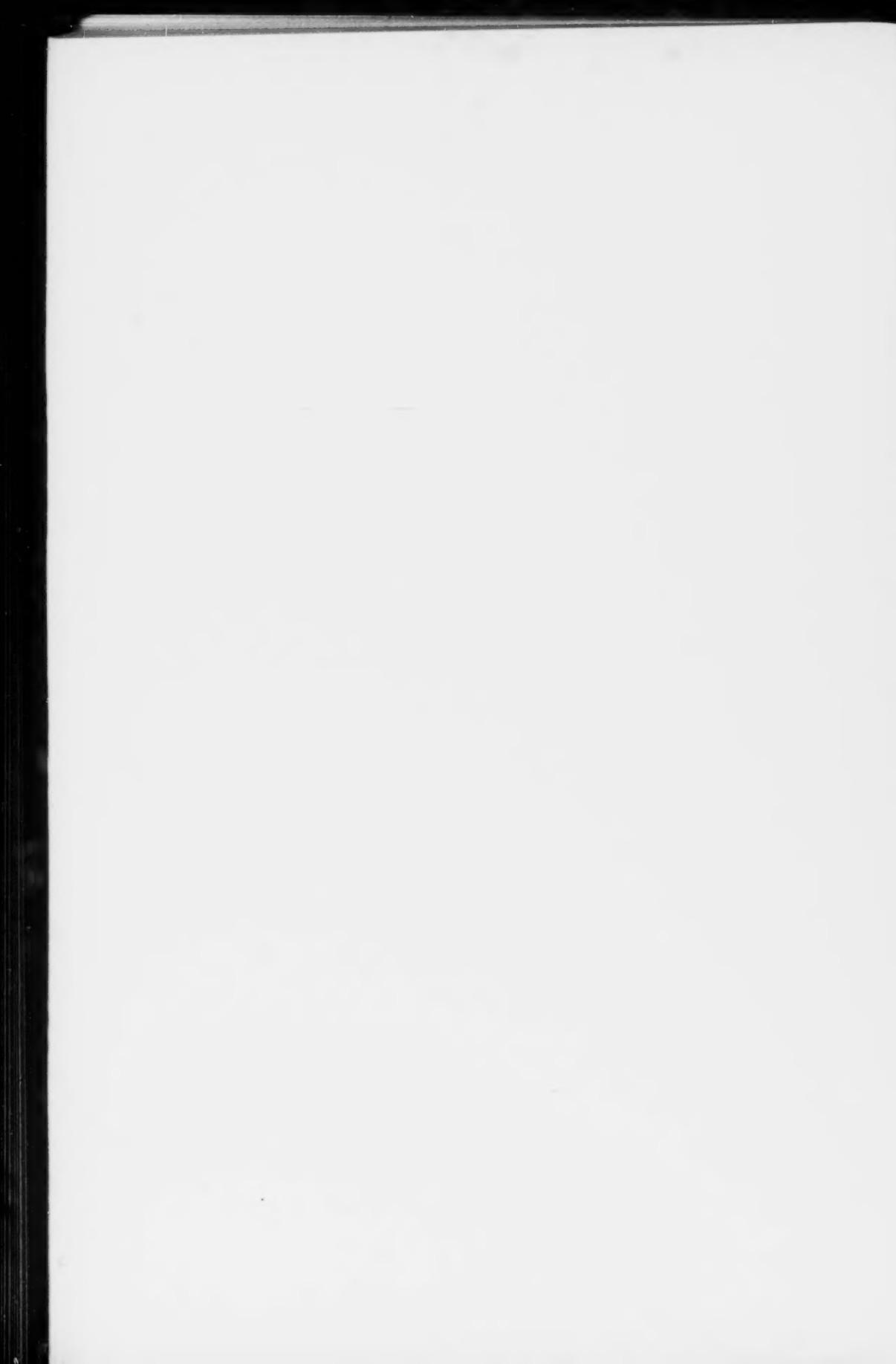
"Wiley's" question No. V. (page vi. herein  
deals with the failure of the Trial Judge to  
act on "Wiley's" "Motion to Compel Answers



From Florence Iona Catlett, et al, Under Rules: 37(a), 37(d), 33, and 26" which was file marked, August 21, 1989 by the clerk, Beverly Hudgens before Judge Brown signed his "ORDER on August 22, 1989. (See APPENDIX "C", App. 5 & 6.).

On March 27, 1989, "Wiley" mailed interrogatories to "LIVELY" Attorney for "FLO" and she returned her set: "Refused Return to Sender". She failed to reply, so on 4-14-89 and 7-20-89, "Wiley" wrote to "LIVELY" asking for his help. When "Lively" never replied, "Wiley" mailed on 8-18-89 his "Motion to Compel Answers from "FLO" Under Rules 37(a), 37(d), 33, and 26"""; however, to date she has not answered the questions filed 8-21-89.

Then, just one day later, 8-22-89, Judge Brown filed his ORDER denying several of "Wiley's motions; however,he ignored "Wiley's "Motion to Compel Answers from "FLO" . . ." Therefore, J. Brown did ERR.



ADAMS v. EPSTEIN, Tex.Civ.App. - Waco, 1934, 77 S.W.2d 545 at p.546 where Chief Justice Gallagher said: "The announced rule is inapplicable here because there was no attempt to dispose of appellee's plea of privilege. Such plea was simply IGNORED and judgment rendered as though it had never been filed. The Court was without jurisdiction to render such judgment, and the same was therefore void."; BOYD v. GILLMAN, Tex.Civ.App.Ct. 1969, 447 S.W.2d 759 at p. 763."

By a long series of decisions The U. S. Supreme Court in MARKHAM v. ALLEN (1945) 326 US 490, 90 L.Ed. 256,,261, 66 S.Ct. 296 at 259 (L.Ed.) said: "it has been established that federal courts of equity have jurisdiction to entertain suits "in favor of creditors, legatees, and heirs and other claimants against a decedent's estate "to establish their claims" so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court. WATERMAN v. CANAL-LOUISIANA BANK & T. CO. 215 US 33, 43, 54 L.Ed. 80, 84, 30 S.Ct. 10 and cases cited."

And on p.257 the MARKHAM court also said: "This suit is not a probate proceeding (nor is the instant case) but a declaration of the custodian's interest in the estate. BYERS v. McAULEY, 149 US 608, 37 L.Ed. 867, 13 S.Ct. 906."



"DUE PROCESS OF LAW" is QUESTION NO. VI.

On May 10, 1983, by order of Probate Judge Burnett (APPENDIX "O", App. 46 thru 49) on motions of "FLO", "Wiley" was removed - without jus cause - from his father's estate. Said order being void as impossible of performance; since there was no letter from an officer of the State of Texas stating that the inheritance taxes had been paid or that none was owed. Ex parte Mason Tex.Civ.App. 1979, 584 S.W.2d 936 at 937, "An order impossible of performance is void." ; Ex parte Mabry, 122 TEX. 54, 52 S.W.2d 74."

On May 24, 1983, "Wiley's" attorney of record, William L. Smith, Jr. of Denton, Tx. wrote letters to the Tarrant County, Texas Probate Clerk and one to the Successor Administratrix of "Ernest's Estate" requesting to be notified and heard in all proceedings therein. Neither Attorney Smith nor "Wiley" was ever notified or heard. Defendants have not denied those facts. (APPENDIX "Q", App. 57 ' 58, Claim No. 7, herein and see "Wiley's complaint, Ex. "G" and pars 97 thru 100.)



"Wiley" is the sole heir of his father; therefore, an interested party, (V.A.T.S., Probate Code, Section 3(r).

Any and all property under the control of the Probate Court No. 1, Cause No. 77-2726, Tarrant County, Tx., really belongs to its sole heir, "Wiley". (V.A.T.S., Probate Code, Sect. 37; In Texas, the heirs are the real owners of the real property upon the death of their ancestor; BRUNSON v. BRUNSON, 1963, (CA 7th Dist.) 372 S.W.2d 761, writ, dism.w.o.o.j.; Whether property passes under will or by descent and distribution, title vests immediately on death of owner, and there is never a time when title is not vested in somebody, ZAHN v. NATIONAL BANK OF COMMERCE (1959, CA Dist.) 328 S.W.2d 783, writ, ref.n.r.e.; KITTREDGE v. RACE, 1875, U.S. Supreme Court, 92 US 116, 23 L.Ed. 488, 490."

The Certificate of Service in the following Applications in Cause No. 77-2726, "Wiley father's estate proves that neither he nor Attorney William L. Smith, Jr. received any notice or hearing on those Applications which would make them comply under "due process of law" where they are requesting action on "Wiley's" real property.

(1) - FILED: 1-12-84, "APPLICATION TO REQUIRE REPRESENTATIVE TO APPLY FOR SALE OF REAL PROPERTY."



(2) - FILED: 3-22-84, "APPLICATION FOR PAYMENT OF EXPENSES OF ADMINISTRATION."

(3) - FILED: 3-22-84, "APPLICATION TO DISCHARGE PERSONAL REPRESENTATIVE AND APPOINT A SUCCESSOR ADMINISTRATOR."

(4) - FILED: 6-18-84, "MOTION FOR AUTHORITY TO SELL REAL PROPERTY."

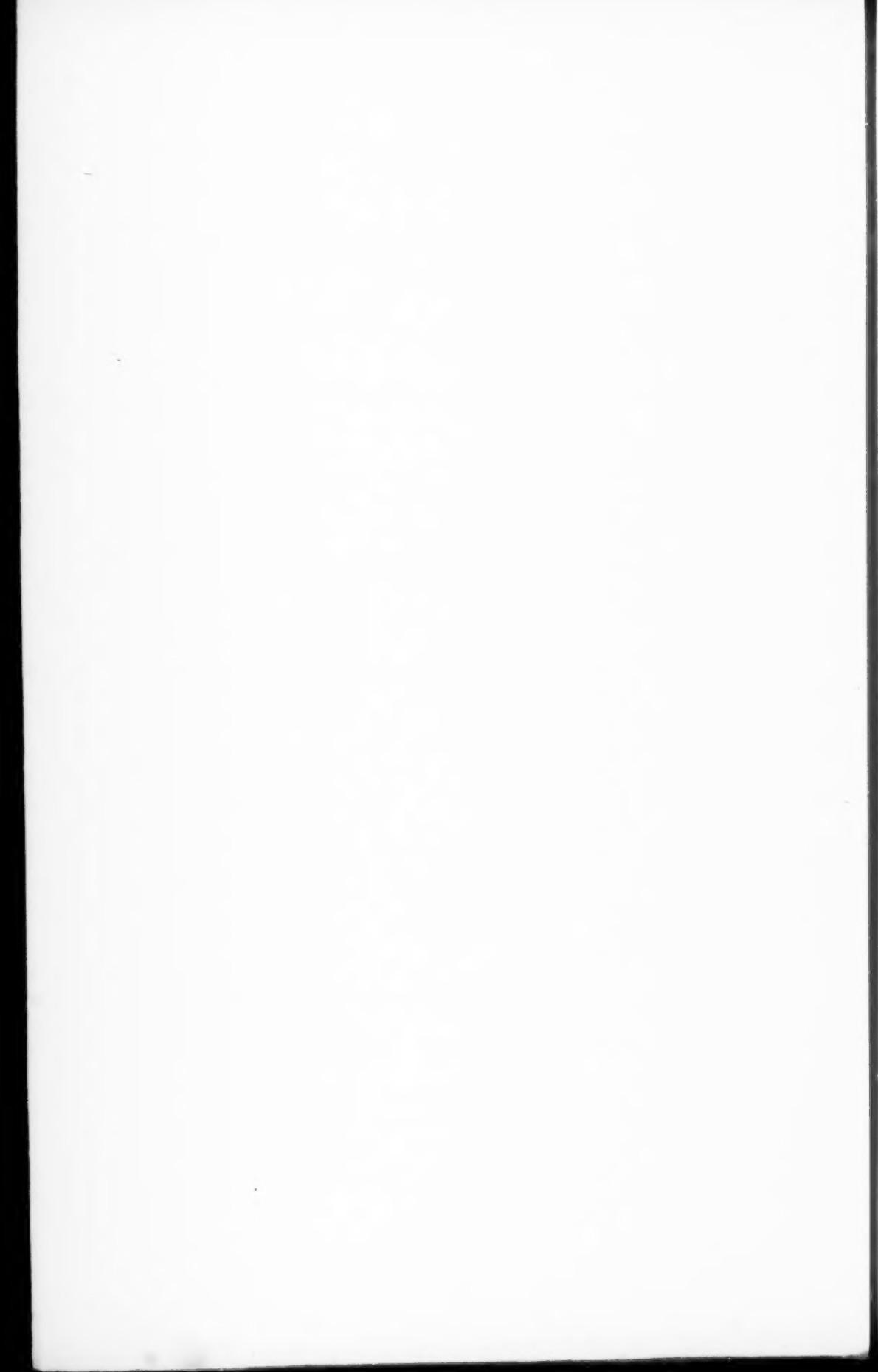
(5) - FILED: 11-26-84, "APPLICATION FOR ORDER TO PAY CLAIMS."

(6) - FILED: 2-11-85, "APPLICATION BY SUCCESSOR ADMINISTRATOR FOR PAYMENT OF FEES AND COSTS."

(7) - FILED: 1-25-85, "AUTHENTICATED CLAIM OF JOHN R. LIVELY" - \$42,228.00 - AGAINST "THIS ESTATE" (Not a legal entity.

SONUS CORP v. MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD (U.S.Dist.Ct.D.MASS, 1974) 61 F.R.D. 644, 18 FR Serv.2d 354 at 649, where Senior District Judge JULIAN said: "However, failure to give any notice to the plaintiff of the application for judgment by default, which application was granted, raises a question of due process. See e.g. SNIADACE v. FAMILY FINANCE CORP., 395 US 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969); MULLANE v. CENTRAL HANOVER TRUST CO., 339 US 306, 334 70 S.Ct. 652, 94 L.Ed. 865 (1950)

Tom J.Fouts a defaulted defendant was never served with a copy of Judge Brown's ORDER, FILED 4-18-89 (APPENDIX "A", Appl 1 nor the 4-18-89 MEMORANDUM OPINION (APPENDIX "B", App. 2 & 3) nor did attorney C. H. Gillespi, III, attorney of record for the Federal Land Bank of Texas.



SONUS CORP. v. MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD. (1972 D.C.MASS) Supra at 648, ". . . no copy was served on the plaintiff corporation. Failure to serve motion upon plaintiff constituted a violation of F.R.Civ.P., 5 and 55(b)(2). In Ken-Mar Airpack, Inc. v. Toth Aircraft & Accessories Co. 12 F.R.D, 399 (W.D.Mo.1952), neither the judgment nor the files showed that the defendant who had been defaulted, had received notice in compliance with F.R.Civ.P. 55(b)(2). The court found, "there was a failure of due process and the judgment is a nullity."

Therefore, it is important to note that those proceedings of Probate Judge Burnett and his Successor Administrator, "RICHARDS" were not probate court proceedings, as such, in that they were selling "Wiley's" land (V.A.T.S., ProbC, Sect. 37) without any notice or hearing to "Wiley" and that "Wiley" is alive. This case at this point, in truth, was not one within their jurisdiction. SCOTT v. McNEAL, 1893, 154 US 34, 14 S.Ct. 1108, 1112, 38 L.Ed. 896 at 901 where Justice Gray said: "No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party."

Judge Burnett and "RICHARDS" acting under the authority of the State of Texas did act to deprive "Wiley", a nonresident of the State of Texas, of his property without due process of law under the 5th & 14th Amendments of the



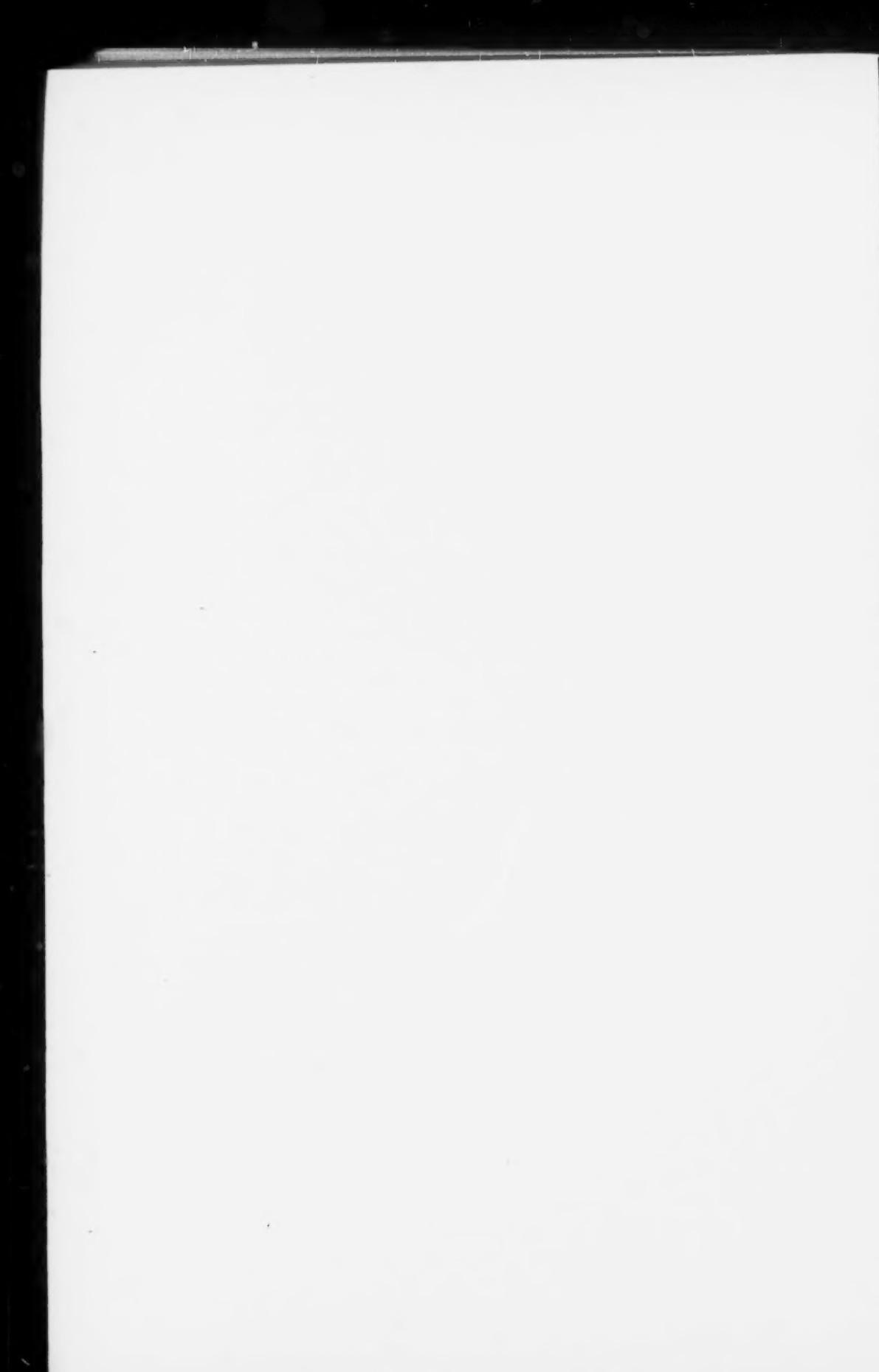
Constitution of the United States. Const.  
Amend. Vth & XIVth, Sect I (APPENDIX "X",  
App. 82.)

Justice STEWART said in FUENTES v. SHEVIN (1972) 407 US 67, 32 L.Ed.2d 556, 92 S.Ct. 1983, rehden. 409 US 902, 34 L.Ed.2d 165, 93 S.Ct. 177, 180 at 569; "(3,4) For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." (cites omitted) at p. 570 he also said: "If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented."

Conclusion: "Wiley's" complaint does have subject matter jurisdiction under Federal Question, 28 U.S.C., 1331. Hence, Judge Brown did ERR in his dismissal without any particular rule stated. And he mislead "Wiley" with his incomplete or partial quote of HISHON, supra (APPENDIX "A" & "B", App. 1 thru 4 and see page 37 herein for his quote & the full quote from CONLEY v. GIBSON, supra,

Professor Moore states: "2A Moore's Fed. Prac. (2nd.Ed.-1985), Par. 12.07, p. 12.50, "Dismissal, may not be granted until the party asserting jurisdiction is permitted an opportunity to demonstrate that jurisdiction exists. Reasonable discovery for this purpose should be allowed, and failure to permit such discovery is usually treated as reversible error."

The Supreme Court has enunciated a strict



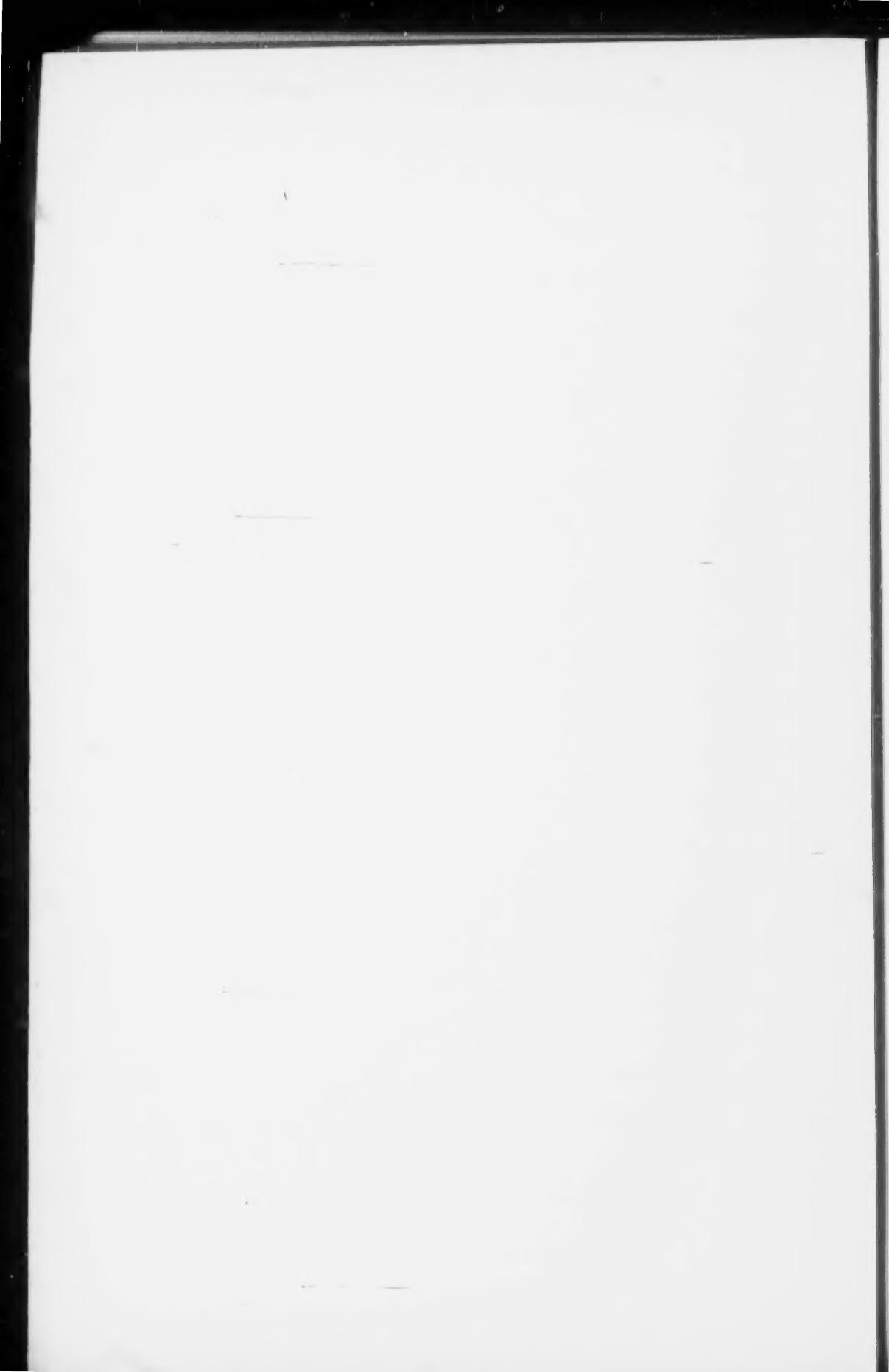
standards for dismissals for lack of subject matter jurisdiction when the basis of jurisdiction is also an element in the plaintiff's federal cause of action. In *BELL v. HOOD*, 327 US 678, 66 S.Ct. 774, 90 L.Ed. 939 (1945) an implied right of action under the 4th & 5th Amend. of the U.S.Const.\* at p. 415 in *WILLIAMSON v. TUCKER* (CA5th - 1981) 645 F2d 404, cert. denied (1981) 454 US 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (Court must permit the plaintiff an opportunity for discovery to demonstrate jurisdiction.)

"ERNEST'S ESTATE" HAS NO FUNDS

Therefore, "Ernest's Estate" can't buy anything from "FLO". The question is how will "FLO" transfer part of the Aubrey, Texas Farm to the estate?

"The District Court shall have \* \* \* Jurisdiction \* \* \* of all suits for trial of title to land \* \* \*, " V.A.T.S., art. V., Sec. 8, Texas Constitution. And Sec. 16 of the Texas Constitution which provides that the county court "shall not have jurisdiction of suits for the recover of land." *FARLEY v. DORSEY*, TEX.SUP.CT., 135 S.W.2d 89 at 90.

"FLO'S" partition action is still "pending" and in trouble in that she also failed to name all of the necessary parties. (V.A.T.S., art. 1982; *LOWMAN v. FALSETTI* (CA5th-1964) 335 F2d 632, cert.denied 85 S.Ct.659, 379 US 966, 13 L.Ed.2d 560 - mandatory)



The FIFTH CIRCUIT in LOWMAN v. FALSETTI, supra, at p.638 states that "NOTICE" is an important objective under art.1982,V.A.T.S.

Yet, they proceeded to use those contractual devices (the "DEEDS" #47175 & #47176, of 9-8-83, Real Property Records, Tarrant County, Tx. - the land is in Denton County, Tx. - from Florence Iona Catlett (defendant herein) to Successor Administrrix, Exhibits "E", pages 1,2,3,& 4 in "RICHARDS" "Motion to Dismiss" in the Federal District Court (S-87-83-CA) to circumvent public policy and the district court of Texas, Denton County, which has exclusive jurisdiction to partition land located in Denton County, as between a living cotenant "FLO" who is adverse to "ERNEST'S ESTATE", and his estate. CARTWRIGHT v. MINTON (Tex.Civ.App. 1959) 318 S.W.2d 449 RNRE at 454, "As a matter of principle it is necessary to weigh the advantages of certainty in contractual relations against the harm and injustice that result from fraud . . . . The same public policy that in general sanctions the avoidance of a promise obtained by deceit strikes down all attempts to circumvent that policy by means of contractual devices. BATES v. SOUTHGATE, 308 Mass 170, 31 N.W.2d 551, 556, 133 A.L.R. 1349 quoted with approval by our Supreme Court."

And all without any notice or hearing to the sole heir, M. Wiley Catlett, from the Probate Court Clerk or from "RICHARDS".



"FLO'S" PARTITION ACTION IN DENTON COUNTY, TX

On December 3, 1981, Florence Iona Catlett filed her partition action in the 158th District Court, Denton County, Texas, Cause No. 81-8158-B against M. Wiley Catlett, Administrator of the Estate of Ernest Luther Catlett, Deceased and R. David Broiles, Attorney at Law, (former attorney of the Estate) and the law firm of Brown, Herman, Scott, Dean & Miles a partnership. "FLO'S" Exhibit "A" therein was the AGREED JUDGMENT, 9-15-81, No. 236-39718-76 Tarrant County, Tx., 236th D.C. (Plaintiff's Exhibit "F" and her Partition action is Plaintiff's Exhibit "D" in "Wiley's" complaint No. S-87-83-CA filed 4-16-87)

"Flo" was seeking to partition the "AUBREY, TEXAS FARM" of an unknown description, see her Item II. "The exact quantity of real property of which the five tracts consists is unknown." "Wiley" will show (Question No. VIII - Void Judgments, etc.) that said AGREED JUDGMENT is null and void for the insufficient description of the land described therein and because of extrinsic fraud and also Rule 60(b) (5).



"FLO" was to receive 5/6th and the estate  
1/6th; however, in "FLO'S" partition action  
Item IV she has the farm divided in this way:

5/6 th - Florence Iona Catlett  
2/15 th - Ernest's Estate  
1/30 th - R. David Broiles & Law Firm  
                  Brown Herman Scott Dean & Miles

On October 4, 1982, Judge Marsutis signed his "ORDER FOR SANCTIONS AND DEFAULT INTER-LOCUTORY JUDGMENT ORDERING PARTITION AND APPOINTING COMMISSIONERS" in which "Lively" inserted the same void descriptions. It appointed Tom J. Fouts, Realtor & a defendant in "Wiley's" complaint in the Federal Court and Realtor, Pat Wilson who on 4-6-81 made "FLO" and offer on the farm of \$3,000 per acre - see CLAIM I herein and J. A. Hinsley as commissioners. Surveyor J. C. Green of SCHOELL, FIELD & ASSOC., INC., Denton, Tx. (That Narsutis 10-4-82 ORDER is APPENDIX "M" App. 29 thru 38) This ORDER has the same description of the farm in it which "Lively" inserted in the AGREED JUDGMENT (Pl.Ex. "F")

On October 14, 1982, Judge Narsutis signed two other judgments; ORDER FOR CORRECTION OF

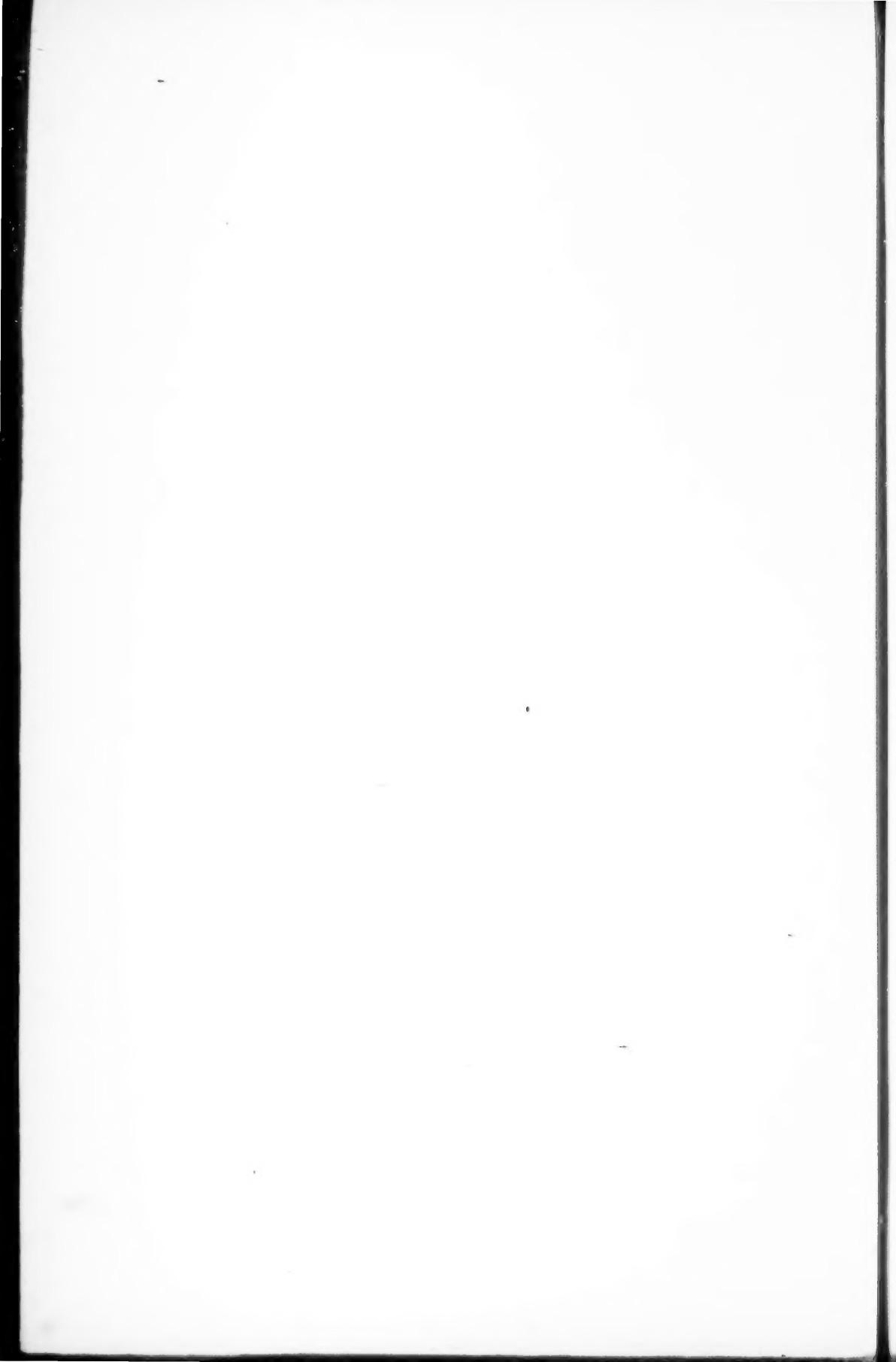


MISTAKES IN INTERLOCUTORY JUDGMENT AND WRIT  
OF PARTITION" and another "INTERLOCUTORY  
ORDER" (APPENDIX "N", App. 39 thru 45)

On May 18, 1983, the Fort Worth, Tx. Appel-  
late Court, No. 2-82-212-CV (#81-8158-B below)  
REVERSED and REMANDED all three Judge Narsutis  
JUDGMENTS, October 4-14-14-82 in "Flo's" par-  
tition action in Denton County with costs  
against Flo. (APPENDIX "P", App. 50 thru 56).  
Unpublished OPINION

That OPINION of the appellate court of May  
18, 1983 shoots down all three Narsutis Judg-  
ments; therefore, there has been no legal par-  
tion of the Aubrey, Texas Farm. Hence, no  
one knows just what particular portion (if not  
all) of that farm belongs to Ernest's Estate  
and his sole heir, "Wiley". The Probate Court  
in the instant case has no power to partition  
that farm. "Probate Court is without jurisdiction  
to partition land jointly owned by decedent  
and living cotenant, inasmuch as cotenant  
's interest was never part of decedent's  
estate."Pmberton v. Leatherwood (CA) 219 S.W.  
2d 490, reh. den. err ref."

That is exactly the situation in the in-  
stant case between "FLO" and the estate. (RS,  
art. 6083) JOHNSON v. COLT (CA) 48 S.W.2d 397 .



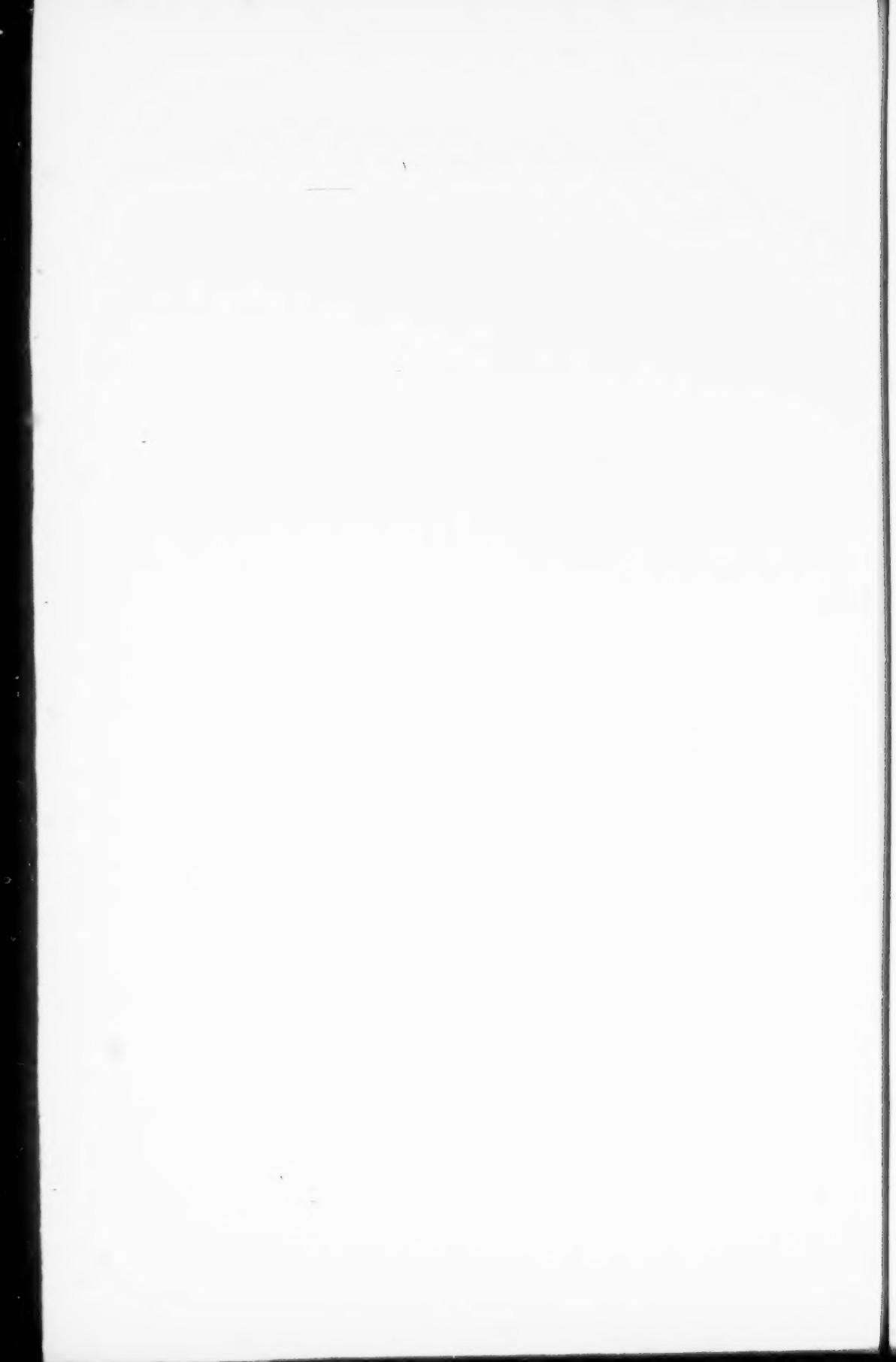
Surveyor Green failed to "honor" the descriptions in Judge Narsutis' 10-4-82 judgment; hence it went down with the appellate court's May 18, 1983 OPINION (APPENDIX "P", App. 50 thru 56). He could not follow those "LIVELY" descriptions so he surveyed what was "fenced-in". Further proving the insufficiency of the descriptions in the judgments.

The following shows Surveyor Green's division according to the shares in Narsutis' judgment of October 4, 1982.

170.185	- Acres to "FLO" (5/6 th)
31.200	- Acres to "Ernest's Estate (2/15 th)
7.800	- Acres to "The Law Firm" (1/30 th)
<u>209.185</u>	Total

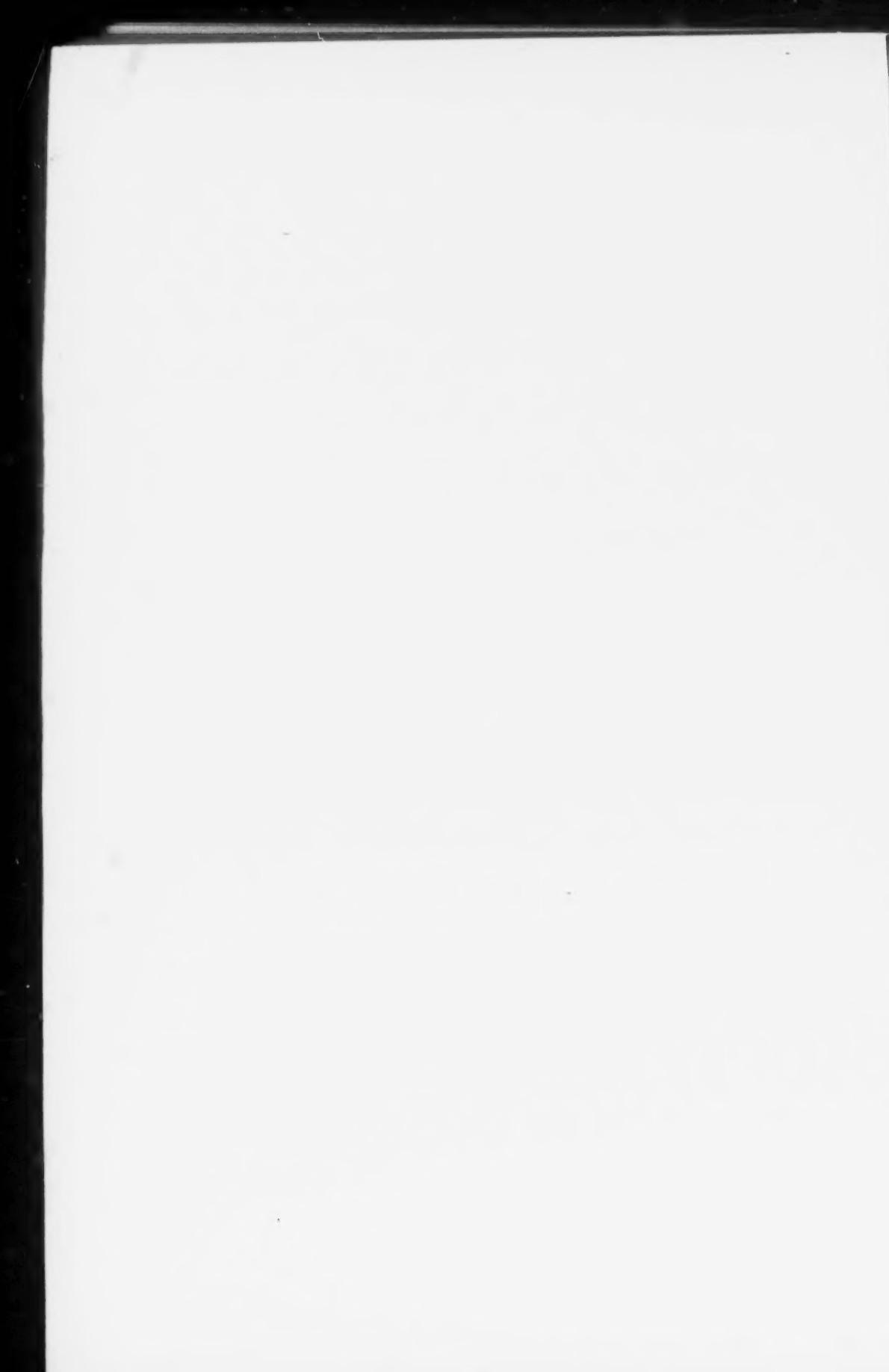
The following acreage figures are from the Real Estate Tax and those descriptions in the AGREED JUDGMENT, 9-15-81 and NARSUTIS' Judgment, 10-4-82 from "LIVELY'S" descriptions:

Tract	From R.E.Tax Records	Agreed Judgment 9-15-81	Narsutis Judgment 10-4-82
	Acres	Acres	Acres
First	80.0	77.93	77.93
Second	14.6	14.6	14.6
Third	54.5	54.5	54.5
Fourth	54.0	54.0	54.0
Fifth	22.0	70.78	70.78
Total	225.1	271.81	271.81



"Wiley's" Question No. VIII. (page xi  
herein) deals with that fact that for many  
sound reasons several ORDERS and JUDGMENTS  
are void and null under Texas Law. In a  
diversity action, State Law controls. ERIE R.  
CO. v. TOMPKINS, 304 US 64 (1938).

EXAMPLE NO. 1 - May 14, 1981,  
"ORDER CONFIRMING SETTLEMENT", Probate Court  
No. 1, Tarrant County, Tx., No. 77-2726, In Re:  
The Estate of Ernest Luther Catlett, Deceased  
is null and void for the following reasons:  
Reason a: That ORDER contains no description  
of the land to be conveyed (really owned by  
"Wiley", V.A.T.S., ProbC., Sec. 37). The  
authority for the need of such is: HARRIS v.  
SHAFER, 86 Tex. 314, 23 S.W. 979 (1893), "We  
hold that the description given in the Order  
Confirmation and in the deed is wholly insuf-  
ficient and in fact no description, furnish-  
ing no means by which the land intended to  
be conveyed can be located at any particular  
place in the survey. The sale is therefore  
void." (See APPENDIX "L", App. 26 thru 28)



Reason b: Judge Burnett, Probate Court No. 1 in that case No. 77-2726 HELD hearings on May 13-14, 1981 on Plaintiff's ("Wiley's") "APPLICATION to APPROVE SETTLEMENT (See STATEMENT OF FACTS by Peggy Ramsey, Official Court Reporter, Tarrant County Probate Court No. 1, Fort Worth, Texas 76102, on May 13, 1981 & May 14, 1981 which states: "BE IT REMEMBERED that on the 13th day of May, 1981, the Petitioner, W.M. WILEY CATLETT as ADMINISTRATOR of the Estate of Ernest Luther Catlett, Dec'd.) not being present or represented by counsel . . . For the Petitioner: None

For the Respondent:  
John R. Lively  
Attorney at Law

held hearings on May 13-14, 1981 on Plaintiff's (Petitioner's) "APPLICATION to APPROVE SETTLEMENT" (APPENDIX "K" & "L", App. 26 thru 28 and he then rendered judgment on the "merits" without anyone present for the plaintiff. Plaintiff was in Highland Park, Ill. and Judge Burnett knew it and former attorney



for "the estate", R. David Broiles, had quit. And Broiles stated so in a letter dated May 1, 1981. Therefore, under those circumstances the Texas Supreme Court has HELD: that the May 14, 1981 "ORDER CONFIRMING SETTLEMENT" of Judge Burnett is void.

FREEMAN v. FREEMAN, 160 Tex. 148, 327 S.W.2d 428 (1959) at 431 where The Supreme Court said: "(3,4) The law of this state does not authorize a defendant to take a default judgment which adjudicates against the plaintiff the merits of his suit. The cases supporting that proposition are legion. BURGER v. YOUNG, 78 Tex. 658, 15 S.W. 107; (long list of cites omitted); EVONS v. WINKLER, Tex.Civ.App.1965, 388 S.W.2d 265 RNRE, at 268-9, "Default judgment taken by defendant which adjudicates against plaintiff merits of plaintiff's suit is void." ; LUM v. LACY, T.C.A.(1981), 616 S.W.2d 260 n.w.h. at 261"(2,4) . . . It is fundamental error to render judgment on merits on a non-appearing plaintiff; PRINCE v. PEURIFOY, T.C.A., 396 S.W.2d 913, at 916" (See also Plaintiff's Ex. "B" in complaint, "Lively's" letter of Dec. 16, 1980 to R. David Broiles)

There was no description in Attorney Broiles' "Motion to Approve Settlement" of 12-22-80. Therefore void under the Statute of Frauds, V.A.T. S., Bus. & C., Sec. 26.01.

Since that May 14, 1981, "ORDER CONFIRMING SETTLEMENT" is void; therefore the re-



sulting and dependent AGREED or CONSENT JUDGMENT of Judge White, Jr. of the 236th District Court, Tarrant County, Texas, No. 236-39718-76 is likewise void; COMET ALUMINUM COMPANY v. Judge DIRBEL, 1979, TEX.SUP. CT., 450 S.W.2d 56 at 59 "(5) . . . Therefore the nunc pro tunc judgment of 3-3-69 purporting to eliminate as clerical error was void; and the subsequent judgment of 3-28-69 granting Levine a new trial is likewise void"; BROWNING v. WEST, T.C.A., 1977, 557 S.W.2d 848 at 851 ref n.r.e.

EXAMPLE NO. 2 - September 15, 1981,  
AGREED JUDGMENT, 236th District Court, Tarrant County, Tx., No. 236-39718-76 is null & void for the following reasons:

Reason a: The description which "LIVELY" placed therein is insufficient; therefore, same is void & null. (See Plaintiff's Ex. "J" with its Exhibits "1" thru "6" therein shown on pages C of A, 4 & 5 with the calculations and figures shown on page 18 F C of that Ex. "J", Fed.R.CivProc., Rule 10(c), See also Attorney "LIVELY'S" letter to "BROILES" dated Dec. 16, 1980, Exhibit "B" in Complaint.)



Reason b: NEW EVIDENCE, pursuant to F.R.C.P.

Rule 60(b)(3) and 60(B)(4) VOID JUDGMENTS

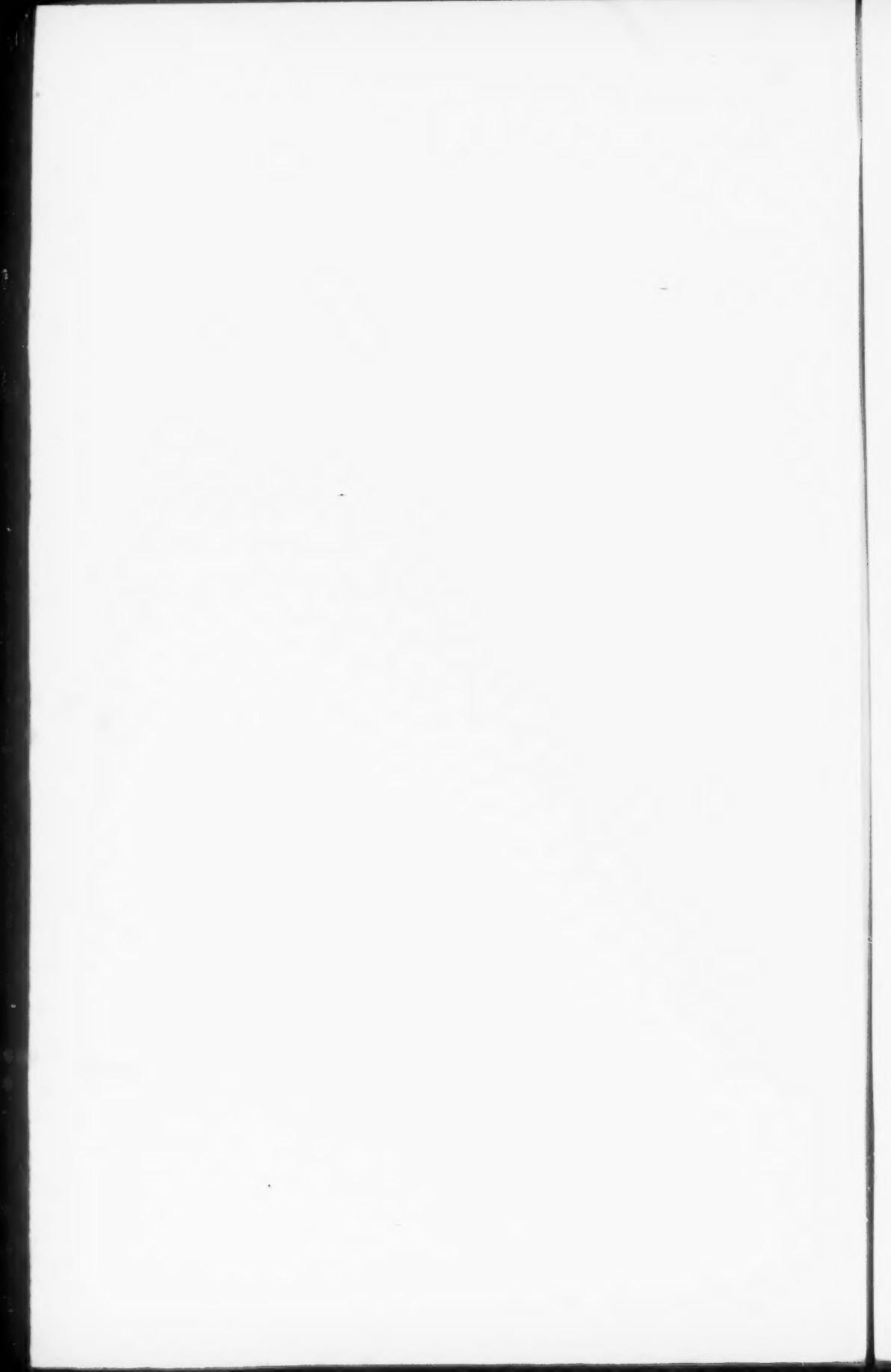
which "Wiley" found is very compelling. It  
is that on April 14, 1884 James Catlett and  
wife SOLD about 28 acres, PART of the FIFTH  
TRACT of the "AUBREY, TEXAS FARM" to J. C.  
POWLEDGE. recorded in the deed records,

Denton County, Tx., vol. 29, p. 9 (Exhibit  
"6" in Plaintiff's Ex. "J" in his complaint)

The construction of property descriptions in deeds or judgments is a question of law. 19 Tex.Jur.2d DEEDS, Sect. 123, P. 423; KINGSTON v. PICKINGS, 46 Tex. 99, at 101, The construction of a deed, being a matter of law, is for the court." COX v. HART, 145 US 376, 36 L.Ed. 741, 12 S.Ct. 962. See THOMPSON v. BRACKEN, T.C.A., Dallas, 1936, 93 S.W.2d 614, writ,ref.n.r.e., at p. 616

"Again it must be said the judgment is void for want of certainty . . . for the reason that it could not be located on the ground." HATTON v. BURGESS, 1943, 167 S.W.2d 260, w.r.w.m., T.C.A., AT

WHITE v. HIDALGO COUNTY WATER IMPROVEMENT DIST. NO.2, (Tex.Civ.App. 1928, 6 S.W.2d 790 at 791 . . . It is futile to contend that a void judgment is res adjudicata as to anything . . . but they could not by any acts . . lose the right to assail a void judgment, for it is an outlaw that any one may attack whenever the occasion offers." ; GREER v. GREER, 1946, 144 Tex. 528, 191 S.W.2d 848 at 849-850



Reason c: Further, said May 14, 1981, "ORDER CONFIRMING SETTLEMENT" (p. 53 herein, Example No. 1 and Example No. 2,, p. 56, Sept. 15, 1981 AGREED JUDGMENT are also void and null by reason of extrinsic fraud committed by "FLO" and "LIVELY" on 11-20-80 and only by reasons of which fraud was "Wiley" induced to enter the settlement-agreement.

Specifically, on 11-20-80 attorney Broiles (The Estate's former attorney) told the Administrator ("Wiley") that "Lively" had told him (Broiles) during the negotiations in the morning while in the judges chambers with "Lively" & Wilson for "FLO" and Trickey for the bank that they "FLO" and "LIVELY" had something very damaging to "The Estate's" case without telling Broiles just what it was.

Broiles was upset and recommended settling. "Wiley" as the Administrator of his father's estate after his death on 6-1-77 (he had been his guardian in Cause No. 76-1182, Probate Court, No. 1, Tarrant County, Tx. of his father by appointment of Judge R. M. Burnett on August 10, 1975) relying on Broiles superior



of Texas law - 25 Tex.Jur.2d, Fraud & Deceit, Sect. 38 - "Wiley" agreed and suffered loss and damages thereby. "Wiley" never fully understood the complex term of said agreement nor did "Broiles" properly inform him. Several major item were not even in the settlement-agreement; however, "Lively" included beneficial items - thereby changing the agreement - which "Wiley" later learned was not proper. WYSS v. BOOKMAN, Comm'n. App.. 1921, 235 S.W. 567; EDWARDS v. GIFFORD, 137 TEX. 559, 155 S.W.2d 786 (1941) at p.569 of WYSS the court said: "Nor do we think the judgment as entered conforms even to the agreement which the trial judge recited the parties to have made in open court . . . we think it is clear that the court would be entirely without authority to render any judgment other than that falling strictly within the terms of the stipulations . . . "

None of the attorneys, including Broiles and least of all "Wiley" knew Texas law regarding settlement-agreements. BURNAMAN v. HEATON, 1951, 150 TEX. 333, 240 S.W.2d 288 at 291 where Justice Smith said: "A valid consent judgment cannot be rendered by a court when consent of one of the parties thereto is wanting. It is not sufficient to support the judgment that a party's consent thereto may at one time have been given; consent must exist at the very moment the court undertakes to make the agreement the judgment of the court." "Wiley" had withdrawn his consent and all knew it



On 1-23-81, Broiles wrote to "Wiley" in Illinois and said: ". . . the primary pressure came from an unknown document which they claimed was going to have some great impact on the trial . . ." Later on we learned that "Lively's" claim was a sham and the document was a will of "Ernest's" handwritten not by him but by "FLO" which alleged will was without any merit at all.

Tex's law provides as follows: "Actionable fraud in this state with regard to transaction in real estate \* \* \* shall consist of either a false representation of a past or existing material fact, or \* \* \* all persons guilty of fraud, as defined by this act, shall be liable to the person defrauded for all actual damages \* \* \* All persons making the false representations \* \* \* shall be jointly and severally liable in actual damages, and in addition thereto all persons knowingly and willfully making such false representations \* \* \* shall be liable in exemplary damages." RS of Texas, 1925, art. 4004. at p. 473 in VREDENBURGH v. BACHMAN (CA5th - 1926) 11 F2d 473.

Further, as shown on pages 8 thru 23 herein and in "Wiley's" complaint he has suffered loss and damages as a result of RICHARDS' BREACH OF TRUST AND FRAUD AND THAT OF "LIVELY" AND HIS CLIENT "FLO".



TO THE HONORABLE JUSTICES  
OF THE SUPREME COURT OF THE UNITED STATES:

FOR THE FOLLOWING SPECIAL AND IMPORTANT REASONS  
YOU SHOULD GRANT THIS WRIT OF CERTIORARI:

REASON ONE: Because the instant decision of the Fifth Circuit Court of Appeals is contrary to the following decisions of the 5th Cir:

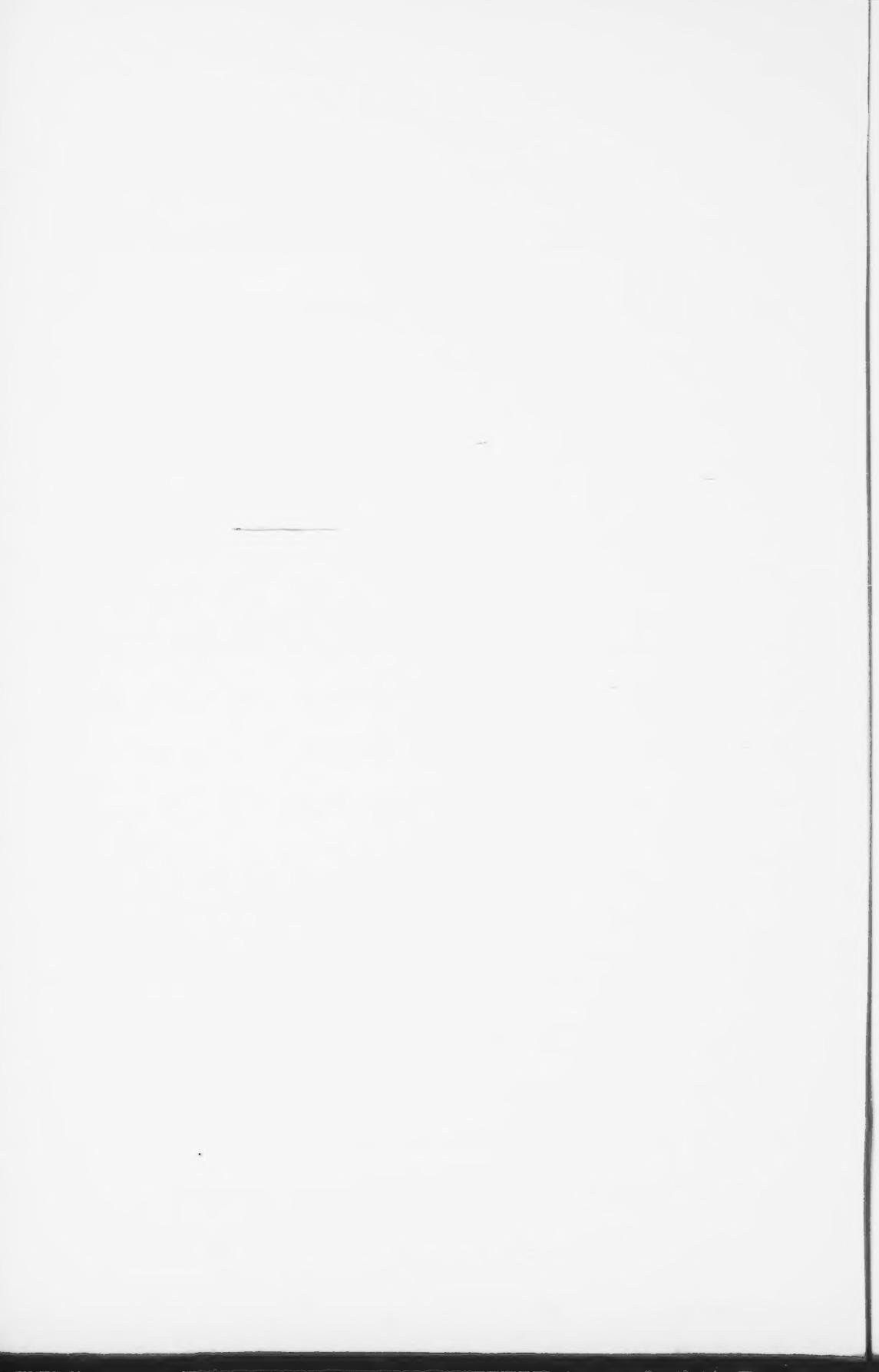
WILLIAMSON V. TUCKER (CA5th - 1981) 645 F2d 404, cert denied (1981) 454 US 897, 102 S.Ct. 396, 70 L.Ed.2d 212, at 415, PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC;

GARRETT v. FIRST NAT. BANK & T. CO. (CA5th - 1946) 153 F2d. 289 at 290 & 291;

REASON TWO: Because the instant decision of the 5th Cir. is contrary to the following case of the 4th Cir. on the same subject matter.

HALL v. COTTINGHAM (Dist.Ct.E.D.South Carolina - 1931) 55 F2d. 659 at 660 & 661, affirmed in COTTINGHAM v. HALL (CA4th - 1932) 664 at 665 & 666;

REASON THREE: Because the instant decision of the Fifth Circuit Court of Appeals is contrary to the following cases of the Supreme Court of the United States on the same subject matter:



PAYNE v. HOOK (1868) 7 Wall 425, 74 US 425, 19 L.Ed. 260 at 260, 261 & 262 (Controlling Case);

MARKHAM v. ALLEN (1945) 326 US 490, 496 90 L.Ed. 256 at 259, 66 S.Ct. 296;

WATERMAN v. CANAL-LOUISIANA BANK & T. CO. (1909) 215 US 33, 43, 54 L.Ed. 80 at 84 & 85, 30 S.Ct. 10;

LASTLY: The most important and compelling reason why you should grant this WRIT OF CERTIORARI is because of the review which Supreme Court Justice Day made on this subject-matter in WATERMAN v. CANAL-LOUISIANA BANK & T. CO., SUPRA, at p.84: "This court has uniformly maintained the right of Federal Courts of chancery to exercise original jurisdiction (the proper diversity of citizenships existing) in favor of creditors, legatees, and heirs, to establish their claims and have a proper execution of the trust as to them. In various forms these principles have been asserted in the following, among other, cases:

Suydam v. Broadnax, 14 Pet 67, 10 L.Ed. 357; Hyde v. Stone, 20 How. 170, 175, 15 L.Ed. 874, 875; Green v. Creighton (Kendall) v. Creighton) 23 How. 90, 16 L.Ed. 419; Payne v. Hook, 7 Wall. 425, 19 L.Ed. 260; Lawrence v. Nelson, 143 US 215, 35 L.Ed. 130, 12 Sup. Ct. Rep. 440; Hayes v. Pratt, 147 US 557, 570, 37 L.Ed. 270, 284, 13 Sup.Ct.Rep. 503; Byers v. McAuley, 149 US 608, 37 L.Ed. 867, 13 Sup.Ct. Rep. 906; Ingersoll v. Coram, 211 US 335, 53 L.Ed. 208, 29 Sup.Ct.Rep. 92."

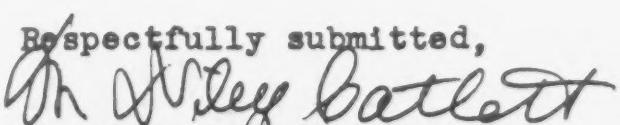


C O N C L U S I O N

I, M.Wiley Catlett, Petitioner hereto, express a belief, based on reasoned and studied judgment, that the trial court and the decisions of the FIFTH CIRCUIT COURT OF APPEALS are contrary to the afore mentioned special, important, and sound parallel cases; therefore, the Supreme Court of the United States' consideration is necessary in order to secure and maintain uniformity of decisions between the various circuit courts and the OPINIONS of the Supreme Court of the United States. Petitioner for the foregoing reasons respectfully requests this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

And we pray this in the name of justice and fairness.

Respectfully submitted,

  
M. Wiley Catlett, Pro Se  
1495 Sunnyside Avenue  
~~Highland Park~~, Ill. 60035  
(708) 831-3893

DATED: This \_\_\_\_ day of July, 1990.